

2001 ASSEMBLY BILL 587

October 25, 2001 – Introduced by Representatives TOWNSEND, LADWIG, GRONEMUS, KREIBICH, OLSEN, OWENS, JENSEN, FREESE, SCHNEIDER, M. LEHMAN, HUEBSCH, URBAN, OTT, KRAWCZYK, SYKORA, PETROWSKI and VRAKAS, cosponsored by Senators PANZER, WELCH, ZIEN, HUELSMAN, ROSENZWEIG, DARLING and ROESSLER. Referred to Committee on Veterans and 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 (1), 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) and 21.18 (4) of the
 6 statutes; **relating to:** creating the Wisconsin naval militia and making an
 7 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 Wisconsin national guard, the Wisconsin naval
20 militia, and the state defense force, the form and issue thereof made under rules
21 adopted by the adjutant 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 member of the national guard, the naval militia, or the state
13 defense force is prosecuted by any civil or criminal action for any act performed by
14 the member while in the performance of military duty and in pursuance of military
15 duty, the action against the member shall be defended by counsel, which may include
16 the attorney general, appointed for that purpose by the governor upon the
17 recommendation of the adjutant general. The adjutant general shall make the
18 recommendation if the act performed by the member was in the line of duty. The costs
19 and expenses of any such defense shall be audited by the department of
20 administration and paid out of the state treasury and charged to the appropriation
21 under s. 20.455 (1) (b) and if the jury or court finds that the member of the national
22 guard, the naval militia, or the state defense force against whom the action is
23 brought acted within the scope of his or her employment as a member, the judgment
24 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 the
2 national guard, the naval militia, or the state defense force under sub. (1) is subject
3 to ss. 893.82 and 895.46.

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

5 21.18 (1) The Except as provided in sub. (4), the military staff of the governor
6 shall consist of the adjutant general, with a minimum rank of brigadier general; a
7 deputy adjutant general for army, who may be a general officer; an assistant adjutant
8 general, army, for readiness and training, who may be a general officer; a deputy
9 assistant adjutant general, army, for readiness and training; a deputy adjutant
10 general for air, who may be a general officer; a chief surgeon for army, who may be
11 a general officer; a chief surgeon for air, who may be a general officer; a staff judge
12 advocate for army, who may be a general officer; a staff judge advocate for air, who
13 may be a general officer; a state chaplain, who may be a general officer; and such
14 other officers as the governor deems necessary. Vacancies in positions other than
15 those of the adjutant general shall be filled through appointment by the adjutant
16 general.

17 **SECTION 18.** 21.18 (4) of the statutes is created to read:

18 21.18 (4) The military staff of the governor shall be to include an assistant to
19 the adjutant general for readiness and training for the naval militia who shall hold
20 the rank of rear admiral lower half, or brigadier general, depending upon branch of
21 service. He or she shall be appointed by the adjutant general with the consent of the
22 governor for a 3-year period and the appointee may be reappointed to successive
23 periods. The appointment of this assistant to the adjutant general shall not be
24 conditioned upon current membership in one of the United States armed forces
25 reserves. However, the appointee must comply with sub. (2) and must currently be

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1 either a member of a U.S. reserve component, or have been separated from military
2 service under honorable conditions. The remainder of the military staff of the naval
3 militia shall be established by military regulations promulgated by the adjutant
4 general and approved by the governor.

5 **SECTION 19.** 21.19 (2) of the statutes is amended to read:

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

13 **SECTION 20.** 21.19 (8) of the statutes is amended to read:

14 21.19 (8) The adjutant general or a designee shall issue all necessary supplies
15 to members and units of the national guard, naval militia, or state defense force and
16 may contract for the purchase and transportation of such supplies, subject to s. 16.71
17 (1).

18 **SECTION 21.** 21.20 of the statutes is amended to read:

19 **21.20 Civil service status.** All full-time state-paid employees of the
20 department of military affairs shall be under the classified service, except the
21 adjutant general, the executive assistant to the adjutant general, the deputy
22 adjutants general for army and air, the assistant to the adjutant general for
23 readiness and training for the naval militia, and the administrator of the division of
24 emergency management.

25 **SECTION 22.** 21.30 of the statutes is amended to read:

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1 **21.30 Chief surgeons; powers and duties.** The chief surgeons for army and
2 air shall, under direction of the adjutant general, have general supervision of the
3 medical units of the Wisconsin national guard, the Wisconsin naval militia, and state
4 defense force when organized. The chief surgeons shall make recommendations
5 concerning procurement of medical supplies for state active duty operations, for the
6 procurement and training of medical personnel and for the publication of Wisconsin
7 national guard, Wisconsin naval militia, or state defense force directives on medical
8 subjects. The chief surgeons shall submit an annual report of the affairs and
9 expenses of their departments to the adjutant general.

10 **SECTION 23.** 21.32 of the statutes is amended to read:

11 **21.32 Physical examinations.** The chief surgeons for army and, air, and
12 naval militia shall provide for such physical examinations and inoculations of
13 officers, enlistees and applicants for enlistment, in the Wisconsin national guard and
14 the Wisconsin naval militia, as may be prescribed by department of defense and
15 national guard regulations and, if applicable, Wisconsin naval militia regulations.

16 **SECTION 24.** 21.35 of the statutes is amended to read:

17 **21.35 Federal laws and regulations; no discrimination.** The
18 organization, armament, equipment and discipline of the Wisconsin national guard
19 and the Wisconsin naval militia shall be that prescribed by federal laws or
20 regulations; and the governor may by order perfect such organization, armament,
21 equipment and discipline, at any time, so as to comply with such laws and
22 regulations insofar as they are consistent with the Wisconsin code of military justice.
23 Notwithstanding any rule or regulation prescribed by the federal government or any
24 officer or department thereof, no person, otherwise qualified, may be denied
25 membership in the Wisconsin national guard or the Wisconsin naval militia because

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1 of sex, color, race, creed or sexual orientation and no member of the Wisconsin
2 national guard or the Wisconsin naval militia may be segregated within the
3 Wisconsin national guard or the Wisconsin naval militia on the basis of sex, color,
4 race, creed or sexual orientation. Nothing in this section prohibits separate facilities
5 for persons of different sexes with regard to dormitory accommodations, public
6 toilets, showers, saunas and dressing rooms.

7 **SECTION 25.** 21.36 (1) of the statutes is amended to read:

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

18 **SECTION 26.** 21.36 (2) of the statutes is amended to read:

19 21.36 (2) The governor may make and publish rules, regulations and orders for
20 the government of the national guard and the naval militia, not inconsistent with the
21 law, and cause the same, together with any laws relating thereto, to be printed and
22 distributed in book form or otherwise in such numbers as the governor deems
23 necessary, and the governor may provide for all books, blank books, and blanks that
24 may be necessary for the proper discharge of the duty of all officers. The governor

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1 may delegate the authority under this subsection to the adjutant general by
2 executive order.

3 **SECTION 27.** 21.38 of the statutes is amended to read:

4 **21.38 Uniform of Wisconsin national guard.** The uniform of the national
5 guard and the naval militia shall be that prescribed by regulations for the
6 corresponding branch of the United States armed forces. The uniform of the naval
7 militia shall be consistent for all unit members regardless of the branch of service.
8 This requirement shall be made by regulation by the adjutant general.

9 **SECTION 28.** 21.43 of the statutes is amended to read:

10 **21.43 Commissions and rank.** The governor shall issue commissions to all
11 officers whose appointments are approved by the governor. Every commission shall
12 be countersigned by the secretary of state and attested by the adjutant general and
13 continue as provided by law. Each officer so commissioned shall take and file with
14 the department of military affairs the oath of office prescribed by article IV, section
15 28, of the constitution. All commissioned officers shall take rank according to the
16 date assigned them by their commissions, and when 2 of the same grade rank from
17 the same date, their rank shall be determined by length of service in the national
18 guard and naval militia creditable for pay, and if of equal service then by lot.

19 **SECTION 29.** 21.47 of the statutes is amended to read:

20 **21.47 Examinations for promotion or appointments.** The governor may
21 order any subordinate officer or person nominated or recommended for promotion or
22 appointment in the national guard or naval militia to be examined by any competent
23 officer or board of officers, designated in orders for that purpose, as to that person's
24 qualifications for the office to which that person may be recommended or appointed,
25 and may take such action on the report of such examining officer or board of officers

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1 as the governor deems to be for the best interests of the service. The governor may
2 also require the physical examination provided for admission to the United States
3 army ~~or~~, air force, navy, marine corps, or coast guard.

4 **SECTION 30.** 21.48 (1) of the statutes is amended to read:

5 21.48 (1) Each officer and enlisted person of the Wisconsin national guard and
6 the naval militia on active duty in the state under orders of the governor on a state
7 pay basis shall receive the base pay and allowances of an officer or enlisted person
8 of equal rank in the corresponding branch of the U.S. armed forces except that the
9 base pay so provided shall not be less than \$50 per day.

10 **SECTION 31.** 21.48 (3) of the statutes is amended to read:

11 21.48 (3) The governor may order, with their consent, to active duty in the
12 department of military affairs, any departmental officers of the governor's staff,
13 including the adjutant general ~~and~~, the deputy adjutants general, and the assistant
14 to the adjutant general for readiness and training for the naval militia, and while so
15 assigned the officers shall receive the pay, but not the allowances, of an officer of
16 equal grade in the armed forces of the United States.

17 **SECTION 32.** 21.59 of the statutes is amended to read:

18 **21.59 Issue of subsistence.** The adjutant general, during state active duty
19 of the national guard, the naval militia, or state defense force, shall issue subsistence
20 to personnel.

21 **SECTION 33.** 102.07 (9) of the statutes is amended to read:

22 102.07 (9) Members of the national guard, the naval militia, and state defense
23 force, when on state active duty under direction of appropriate authority, but only in
24 case federal laws, rules or regulations provide no benefits substantially equivalent
25 to those provided in this chapter.

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1 **SECTION 34.** 102.475 (1) of the statutes is amended to read:

2 102.475 **(1)** SPECIAL BENEFIT. If the deceased employee is a law enforcement
3 officer, correctional officer, fire fighter, rescue squad member, diving team member,
4 national guard member, naval militia member, or state defense force member on
5 state active duty as described in s. 102.07 (9) or if a deceased person is an employee
6 or volunteer performing emergency management activities under ch. 166 during a
7 state of emergency or a circumstance described in s. 166.04, who sustained an
8 accidental injury while performing services growing out of and incidental to that
9 employment or volunteer activity so that benefits are payable under s. 102.46 or
10 102.47 (1), the department shall voucher and pay from the appropriation under s.
11 20.445 (1) (aa) a sum equal to 75% of the primary death benefit as of the date of death,
12 but not less than \$50,000 to the persons wholly dependent upon the deceased. For
13 purposes of this subsection, dependency shall be determined under ss. 102.49 and
14 102.51.

15 **SECTION 35.** 230.35 (3) (a) of the statutes, as affected by 2001 Wisconsin Act 16,
16 is amended to read:

17 230.35 **(3)** (a) Officials and employees of the state who have permanent status
18 and who are members of the national guard, the naval militia, the state defense force,
19 or any other reserve component of the military forces of the United States or this
20 state now or hereafter organized or constituted under federal or state law, are
21 entitled to leaves of absence without loss of time in the service of the state, to enable
22 them to attend military schools and annual field training or annual active duty for
23 training, and any other state or federal tours of active duty, except extended active
24 duty or service as a member of the active armed forces of the United States which
25 have been duly ordered but not exceeding 30 days, excluding Saturdays, Sundays

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1 and holidays enumerated in sub. (4) in the calendar year in which so ordered and
2 held. During this leave of absence, each state official or employee shall receive base
3 state pay less the base military pay received for and identified with such attendance
4 but such reduction shall not be more than the base state pay. Other than for a leave
5 of absence for the adjutant general and any deputy adjutants general, such leave
6 shall not be granted for absences of less than 3 days. A state official or employee
7 serving on state active duty as a member of the national guard, naval militia, or state
8 defense force, may elect to receive pay from the state under s. 20.465 (1) in an amount
9 equal to base state salary for such period of state active duty. Leave granted by this
10 section is in addition to all other leaves granted or authorized by any other law. For
11 the purpose of determining seniority, pay or pay advancement and performance
12 awards the status of the employee shall be considered uninterrupted by such
13 attendance.

SECTION 36. Appropriation changes.

14
15 (1) NAVAL MILITIA. In the schedule under section 20.005 (3) of the statutes for
16 the appropriation to the department of military affairs under section 20.465 (1) (a)
17 of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$-0-
18 for fiscal year 2001-02 and the dollar amount is increased by \$-0- for fiscal year
19 2002-03 to fund the costs for operating the naval militia.

20 (2) NAVAL MILITIA. In the schedule under section 20.005 (3) of the statutes for
21 the appropriation to the department of military affairs under section 20.465 (1) (g)
22 of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$-0-
23 for fiscal year 2001-02 and the dollar amount is increased by \$-0- for fiscal year
24 2002-03 to fund the costs for the rent of properties used by the naval militia.

25 (END)