

AMENDED IN ASSEMBLY JUNE 19, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN SENATE JUNE 13, 2011

SENATE BILL

No. 807

Introduced by ~~Senators Correa and Lieu~~ Senator Correa
(Coauthor: Assembly Member Pan)

February 18, 2011

An act to amend Sections 142, 148, 161, 162, 164.1, and 166 of, to add Section 141.5 to, and to repeal Section 167 of, the Military and Veterans Code, relating to the state militia.

LEGISLATIVE COUNSEL'S DIGEST

SB 807, as amended, Correa. State militia.

Existing law provides that the Governor is the Commander in Chief of the Militia of the State. Existing law authorizes the Governor to order the active militia or any portion of the militia to perform military duty of every description, as described.

This bill would specify that the state active duty force consists of service members in active state service when ordered by the Governor. This bill would specify and revise conditions for state active duty for service members, as provided, and would authorize the Adjutant General to promulgate regulations in conformity with these provisions.

Existing law authorizes the Governor to make rules and regulations in conformity with the Military and Veterans Code that conform as nearly as practicable to those governing the United States Army, United States Air Force, and United States Navy.

This bill would instead require the Governor to direct the Adjutant General to make those rules and regulations.

Existing law specifies the membership of the office of the Adjutant General, including one officer who may be of the rank of brigadier general who is the Assistant Adjutant General. Existing law specifies that the Assistant Adjutant General is subordinate only to the Governor and the Adjutant General, and specifies 2 officers who may be of the rank of brigadier general, one of whom is the Deputy Adjutant General, Army Division and the other who is the Deputy Adjutant General, Air Division.

This bill would revise the ranks of officers in that office, by providing instead for one officer who may be of the rank of brigadier general who is the Deputy Adjutant General, and would require his or her duties to be assigned by the Adjutant General. This bill would, with regard to the Deputies Adjutant General, described above, provide for 2 officers who may be of the rank of brigadier general, one who is the Assistant Adjutant General, Army ~~Division~~, and the other who is the Assistant Adjutant General, Air ~~Division~~. This bill would also specify one officer who is the Chief of Staff and Director of the Joint Staff.

Existing law requires the Governor to appoint the Adjutant General. Existing law provides that the Adjutant General receives the same pay and allowances as received by a lieutenant general in the Army of the United States.

This bill would require the Governor to appoint the Adjutant General on state active duty in the grade of lieutenant general, and would make conforming changes to that provision relating to the pay and benefits of the Adjutant General.

Under existing law, in the event of the absence of the Adjutant General or of his inability to perform his duties, the officer designated by the Adjutant General or the senior officer in the Adjutant General's office performs those duties.

This bill would instead specify that those duties are to be performed by the Deputy Adjutant General or other officer designated by the Adjutant General.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:

1 (a) The full-time state militia provides California with a
2 well-trained state military force that plays an integral role in the
3 state's emergency management system. The Governor, as
4 Commander in Chief, commands all state military forces through
5 the Adjutant General. California law requires the Adjutant General
6 to command the state military for civil support, the California
7 Cadet Corps, Youth Programs, and Funeral Honors Programs. In
8 addition, the Adjutant General commands state military forces in
9 military civil support when the public's safety is jeopardized
10 because of manmade or natural disasters. The full-time state
11 military force provides California with military capabilities used
12 to prepare for, respond to, and recover from the effects of
13 emergencies regardless of cause, size, location, or complexity. The
14 state militia is comprised of federally trained California National
15 Guard and experienced State Military Reserve service members
16 who are capable of immediately employing resources to save lives,
17 prevent human suffering, or mitigate great property damage within
18 the State of California.

19 (b) State active duty plays an important role in the national
20 response framework. Under the 10th Amendment to the United
21 States Constitution, national emergency response frameworks
22 recognize that state forces have primary responsibility for providing
23 military support to state and local authorities in emergencies.
24 National Guard civil support refers to support provided to civil
25 authorities for domestic emergencies and for designated law
26 enforcement and other duties by the National Guard while in state
27 active duty or while having the status described in Title 32 of the
28 United States Code. State active duty military forces and National
29 Guard forces conduct all missions in accordance with the needs
30 of the state and within the guidelines of state laws. Because the
31 National Guard continuously builds relationships with its civilian
32 counterparts, when National Guard forces arrive to support an
33 incident response, they usually integrate with first responders very
34 quickly.

35 SEC. 2. Section 141.5 is added to the Military and Veterans
36 Code, to read:

37 141.5. The state active duty force consists of service members
38 in active state military service when ordered by the Governor in
39 accordance with this code.

SEC. 3. Section 142 of the Military and Veterans Code is amended to read:

142. (a) The Governor may order the active militia or any portion of it to perform military duty of every description, including necessary administrative duties, and to participate in small arms gunnery competitions in this state or in any other state or territory or the District of Columbia, or in any fort, camp, or reservation of the United States. He or she may also authorize the performance of military duty or participation in small arms or gunnery competitions by any part of the active militia anywhere without the state or without the United States. Cruise duty ordered for the Naval Militia may be required to be performed on United States vessels.

~~(b) An order to state active duty under this section for assignments of less than six years shall be based on using the most qualified service member for the assignment. A service member's orders shall expire annually unless renewed or the service member is separated for cause.~~

~~(c) A service member ordered to state active duty in accordance with this section who remains on state active duty for a cumulative total of six years shall be eligible for the career state active duty system and may remain on state active duty until the service member reaches 60 years of age or is separated for cause. At 60 years of age, a service member's orders shall be temporary and may be renewed annually.~~

~~(b) Service members selected for permanent positions shall be selected using a military competitive selection process. A service member ordered to state active duty in accordance with this section who remains on state active duty for six consecutive years shall be eligible for career state active duty.~~

~~(c) Orders for a service member with less than six years of state active duty service shall expire annually unless renewed or the service member is separated for cause.~~

(d) When a service member reaches 64 years of age, or when federal recognition of his or her grade or rank is withdrawn, whichever occurs later, the service member shall be retired from state active duty.

(e) ~~A new service member ordered to on state active duty on or after January 1, 2013,~~ with the Military Department pursuant to this section shall be a current member of the California National

Guard, retired or otherwise honorably separated from federal active military or California National Guard service with current membership in the State Military Reserve, or be a current member of the State Military Reserve with a minimum of two years of state service. Service members on state active duty who retire federally from the California National Guard shall be automatically assessed into the State Military Reserve.

(f) A commissioned officer on state active duty assigned to a general officer position who, previous to that duty, held a state active duty position at a lower grade may revert to the grade last held upon vacation of the general officer position, if a position is available.

(g) Notwithstanding any other law, a service member who is on state active duty may be relieved from state active duty if the Adjutant General, acting in good faith and on behalf of the Governor, abolishes a position and assigns duties elsewhere. *The department shall make reasonable attempts to place the service member in an available position for which the service member is otherwise qualified.*

(h) The Adjutant General, under the authority of the Governor as Commander in Chief, shall promulgate regulations in conformity with this section.

SEC. 4. Section 148 of the Military and Veterans Code is amended to read:

148. The Governor shall direct the Adjutant General to make rules and regulations in conformity with this code which shall conform as nearly as practicable to those governing the United States Army, United States Air Force, and United States Navy. The rules and regulations shall have the same force and effect as the provisions of this code.

A finding by the Governor that it is impracticable to conform rules and regulations to those governing the United States Army, United States Air Force, or United States Navy shall be conclusive and the rules and regulations shall have force and effect over inconsistent rules, regulations, directives, manuals, or practices governing any of the Armed Forces of the United States.

SEC. 5. Section 161 of the Military and Veterans Code is amended to read:

161. Within the Military Department, the office of the Adjutant General consists of one officer of the rank of lieutenant general

1 who is the Adjutant General, one officer of the rank of brigadier
2 general who is the Deputy Adjutant General, one officer who may
3 be of the rank of brigadier general who is the Assistant Adjutant
4 General, Army ~~Division~~, one officer who may be of the rank of
5 brigadier general who is the Assistant Adjutant General, Air
6 ~~Division~~, one officer who may be of the rank of brigadier general
7 who is the Chief of Staff and Director of the Joint Staff, and other
8 officers as are prescribed by the laws or regulations of the United
9 States. No person is eligible for appointment as the Deputy
10 Adjutant General unless he or she ~~had~~ *has* not less than a total of
11 five years of commissioned service in the National Guard of the
12 United States, of which at least three years shall be service as a
13 field grade officer in the California National Guard within the
14 preceding 10-year period prior to the date of appointment and of
15 which at least three years shall have been in command of army or
16 air troops at the battalion or equivalent or higher command level
17 or three years as a staff officer at brigade or equivalent or higher
18 staff level. The Deputy Adjutant General is subordinate only to
19 the Governor and the Adjutant General and shall have his or her
20 duties assigned by the Adjutant General.

21 SEC. 6. Section 162 of the Military and Veterans Code is
22 amended to read:

23 162. The Governor, as Commander in Chief, shall appoint the
24 Adjutant General, who shall be on state active duty, in the grade
25 of lieutenant general, with the advice and consent of the Senate,
26 and that person shall hold office at the pleasure of the Governor,
27 or until his or her successor is appointed and has qualified. No
28 person is eligible for appointment as Adjutant General unless he
29 or she ~~had~~ not less than a total of 10 years of commissioned service
30 in the National Guard of the United States, of which at least four
31 years shall be service as a field grade officer in the California
32 National Guard within the preceding 10-year period prior to the
33 date of appointment and of which at least four years shall have
34 been in command of army or air troops at the battalion or
35 equivalent or higher command level or four years as a staff officer
36 at brigade or equivalent or higher staff level.

37 SEC. 7. Section 164.1 of the Military and Veterans Code is
38 amended to read:

39 164.1. The Adjutant General shall receive the same pay and
40 benefits pursuant to Section 320 as a lieutenant general in the Army

1 of the United States and shall be paid in the same manner and at
2 the same time as other ~~state officers~~ *service members on state*
3 *active duty*.

4 SEC. 8. Section 166 of the Military and Veterans Code is
5 amended to read:

6 166. In the event of the absence of the Adjutant General or of
7 his or her inability to perform his or her duties, the Deputy Adjutant
8 General or other officer designated by the Adjutant General shall
9 perform the duties of the Adjutant General. In the event of the
10 absence or inability of those officers, the Governor may detail a
11 National Guard officer to perform those duties.

12 SEC. 9. Section 167 of the Military and Veterans Code is
13 repealed.