

Senate Bill No. 807

CHAPTER 355

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.

[Approved by Governor September 17, 2012. Filed with
Secretary of State September 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 807, 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, and the other who is the Assistant Adjutant General, Air. 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.

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

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

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

(b) State active duty plays an important role in the national response framework. Under the 10th Amendment to the United States Constitution, national emergency response frameworks recognize that state forces have primary responsibility for providing military support to state and local authorities in emergencies. National Guard civil support refers to support provided to civil authorities for domestic emergencies and for designated law enforcement and other duties by the National Guard while in state active duty or while having the status described in Title 32 of the United States Code. State active duty military forces and National Guard forces conduct all missions in accordance with the needs of the state and within the guidelines of state laws. Because the National Guard continuously builds

relationships with its civilian counterparts, when National Guard forces arrive to support an incident response, they usually integrate with first responders very quickly.

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

141.5. The state active duty force consists of service members in active state military service when ordered by the Governor in 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) 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 status 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 may remain on state active duty under temporary orders which may be renewed annually.

(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 service member on state active duty 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 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. 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 who is the Adjutant General, one officer of the rank of brigadier general who is the Deputy Adjutant General, one officer who may be of the rank of brigadier general who is the Assistant Adjutant General, Army, one officer who may be of the rank of brigadier general who is the Assistant Adjutant General, Air, one officer who may be of the rank of brigadier general who is the Chief of Staff and Director of the Joint Staff, and other officers as are prescribed by the laws or regulations of the United States. No person is eligible for appointment as the Deputy Adjutant General unless he or she has not less than a total of five years of commissioned service in the National Guard of the United States, of which at least three years shall be service as a field grade officer in the California National Guard within the preceding 10-year period prior to the date of appointment and of which at least three years shall have been in command of army or air troops at the battalion or equivalent or higher command level or three years as a staff officer at brigade or equivalent or higher staff level. The Deputy Adjutant General is subordinate only to the Governor and the Adjutant General and shall have his or her duties assigned by the Adjutant General.

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

162. The Governor, as Commander in Chief, shall appoint the Adjutant General, who shall be on state active duty, in the grade of lieutenant general, with the advice and consent of the Senate, and that person shall hold office at the pleasure of the Governor, or until his or her successor is appointed and has qualified. No person is eligible for appointment as Adjutant General

unless he or she had not less than a total of 10 years of commissioned service in the National Guard of the United States, of which at least four years shall be service as a field grade officer in the California National Guard within the preceding 10-year period prior to the date of appointment and of which at least four years shall have been in command of army or air troops at the battalion or equivalent or higher command level or four years as a staff officer at brigade or equivalent or higher staff level.

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

164.1. The Adjutant General shall receive the same pay and benefits pursuant to Section 320 as a lieutenant general in the Army of the United States and shall be paid in the same manner and at the same time as other service members on state active duty.

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

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

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