

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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1

HOUSE BILL 432

Short Title: N.C.N.G. Mobilization Lessons/AB.

(Public)

Sponsors: Representatives Baddour, Justus, Sexton (Cosponsors); Adams, Alexander, Bonner, Boyd-McIntyre, Brawley, Brown, Davis, Decker, Dedmon, Dockham, Goodwin, Gulley, Hall, Hardy, Hiatt, Hightower, R. Hunter, Hurley, Ives, Jeffus, Kiser, McAllister, McMahan, Mercer, Moore, Morris, Mosley, Nesbitt, Oldham, Rayfield, Redwine, Russell, Saunders, Smith, Starnes, Sutton, Tolson, Warwick, C. Wilson, Wood, Wright, and Yongue.

Referred to: State Government, if favorable, Judiciary II.

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE LESSONS LEARNED FROM HURRICANE FRAN
3 WITH RESPECT TO THE MOBILIZATION OF THE NORTH CAROLINA
4 NATIONAL GUARD.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 127A of the General Statutes is amended by adding a new
7 section to read:

8 "**§ 127A-202.1. Discrimination against persons who serve in the North Carolina**
9 **National Guard and acts of reprisal prohibited.**

10 (a) A person who is a member of the North Carolina National Guard who
11 performs, has performed, applies to perform, or has an obligation to perform service in
12 the North Carolina National Guard shall not be denied initial employment,
13 reemployment, retention in employment, promotion, or any benefit of employment by an
14 employer on the basis of that membership, applications for membership, performance of
15 service, application for service, or obligation.

1 (b) An employer shall be considered to have denied a person initial employment,
2 reemployment, retention in employment, promotion, or a benefit of employment in
3 violation of this section if the person's membership, application for membership, service,
4 application for service, or obligation for service in the North Carolina National Guard is a
5 motivation factor in the employer's action, unless the employer can prove that the action
6 would have taken place in the absence of the membership, application for membership,
7 performance of service, application for service, or obligation.

8 (c) An employer may not discriminate in employment against or take any adverse
9 employment action against any person because that person has taken an action to enforce
10 a protection afforded to any person under this Article, has testified or otherwise made a
11 statement in or in connection with any proceeding under this Article, has assisted or
12 otherwise participated in an investigation under this Article, or has exercised a right
13 provided for in this Article.

14 (d) The prohibition in subsection (c) of this section shall apply to any person
15 regardless of whether or not that person serves or has served with the North Carolina
16 National Guard, and shall apply to any position of employment in this State.

17 (e) The Commissioner of Labor shall enforce the provisions of this section. The
18 relevant procedures contained in G.S. 95-242, G.S. 95-243, and the rules issued pursuant
19 to G.S. 95-245 shall be used in enforcing this section."

20 Section 2. G.S. 127A-105 reads as rewritten:

21 **"§ 127A-105. Rations and pay on State service.**

22 The militia of the State, both officers and enlisted personnel, when called into the
23 service of the State by the Governor shall receive the same pay as when called or ordered
24 into the service of the United States, and shall be rationed or paid the equivalent thereof,
25 provided that no officer or enlisted personnel shall receive less than ~~12-18~~ times the
26 minimum hourly wage per day as provided for in ~~G.S. 95-87- G.S. 95-25.3(a).~~"

27 Section 3. G.S. 127A-107 reads as rewritten:

28 **"§ 127A-107. Rate of pay for other service.**

29 The Governor may, whenever the public service requires it, order upon special or
30 regular duty any officer or enlisted member of the national guard or naval militia, and the
31 expenses and compensation therefor of such officer and enlisted member shall be paid
32 out of the appropriations made to the Department of Crime Control and Public Safety.
33 Such officers and enlisted members shall receive the same rate of pay as officers and
34 enlisted members of the same grade and like service of the regular service, provided that
35 no such officer or enlisted member shall receive less than ~~12-18~~ times the minimum
36 hourly wage per day as provided for in ~~G.S. 95-87- G.S. 95-25.3(a).~~ Officers and enlisted
37 members when on duty in connection with examining boards, efficiency boards, advisory
38 boards, courts of inquiry or similar duty shall be allowed per diem and subsistence
39 prescribed for lawful State boards and commissions generally for such duty. Officers and
40 enlisted members serving on general or special courts-martial shall receive the base pay
41 of their rank. No staff officer or enlisted member who receives a salary from the State as
42 such shall be entitled to any additional compensation other than actual and necessary
43 expenses incurred while traveling upon orders issued by the proper authority."

1 Section 4. Chapter 127A of the General Statutes is amended by adding a new
2 section to read:

3 "§ 127A-111. Civilian leave option. – A member of the North Carolina National
4 Guard called into service of the State by the Governor shall have the right
5 to take leave without pay from his or her civilian employment. No
6 member of the North Carolina National Guard shall be forced to use or
7 exhaust his or her vacation or other accrued leaves from his or her civilian
8 employment for a period of active service. The choice of leave shall be
9 solely within the discretion of the member."

10 Section 5. Chapter 127A of the General Statutes is amended by adding a new
11 section to read:

12 "§ 127A-41.1. Stay of legal and court proceedings because of State military service.

13 At any stage of any legal proceeding in any court in which a person called into service
14 of the State by the Governor is involved, either as plaintiff or defendant, during the
15 period of service or within 60 days after the conclusion of the period of active service, all
16 actions and proceedings:

- 17 (1) May be stayed by the court on its own motion; or
18 (2) Shall be stayed on application by the member or by a person acting on
19 behalf of the member, unless, in the opinion of the court, the ability of
20 the plaintiff to prosecute the action or the defendant to conduct his
21 defense is not materially affected by reason of the military service."

22 Section 6. G.S. 127A-106 reads as rewritten:
23 **"§ 127A-106. Paid by the State.**

24 When the militia or any portion thereof shall be ordered by the Governor into State
25 service, the ~~pay,~~ pay (including payment for any leave earned as a result of more than 30
26 days of continuous service), subsistence, transportation and other necessary expenses
27 incident thereto shall be paid by the State Treasurer, upon the approval of the Governor."

28 Section 7. Sections 1 through 6 of this act shall become effective December 1,
29 1997. Section 7 of this act is effective when it becomes law.