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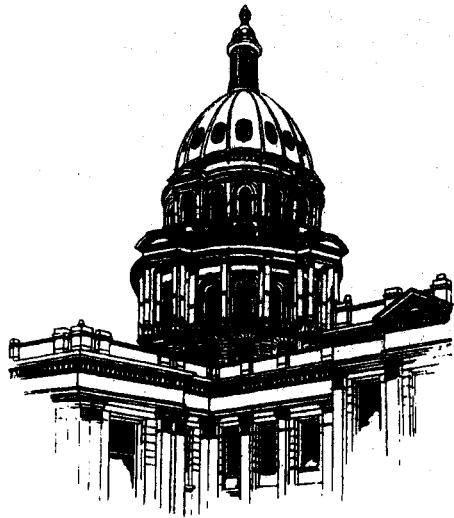
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**Department of  
Military Affairs  
Interim  
Committee**

**Report to the  
COLORADO  
LEGISLATIVE COUNCIL**

**Colorado Legislative Council  
Research Publication No. 411  
October 1995**

**RECOMMENDATIONS FOR 1996**

**INTERIM COMMITTEE ON THE  
DEPARTMENT OF MILITARY AFFAIRS**

**Report to the  
Colorado General Assembly**

**Research Publication No. 411  
November 1995**

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**LEGISLATIVE COUNCIL**

ROOM 029 STATE CAPITOL  
DENVER, COLORADO 80203-1784  
(303) 866-3521      FAX: 866-3855      TDD: 866-3472

October 30, 1995

To Members of the Sixtieth General Assembly:

Submitted herewith is the final report of the Interim Committee on the Department of Military Affairs. This committee was established by a study resolution adopted by the Executive Committee of Legislative Council at its June 8, 1995 meeting.

At its meeting on October 17, 1995, the Legislative Council reviewed the final report of this committee. A motion to forward this report and the bills therein for consideration in the 1996 session was approved.

Respectfully submitted,

/s/      Senator Tom Norton  
         Chairman  
         Legislative Council

TN/fb

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# **INTERIM COMMITTEE ON THE DEPARTMENT OF MILITARY AFFAIRS**

## **Members of the Committee**

Senator Joan Johnson, Chairman  
Senator Mike Coffman  
Senator Richard Mutzebaugh

Representative Don Armstrong  
Representative Jim Congrove  
Representative Doug Lamborn  
Representative Gary McPherson  
Representative Mark Paschall  
Representative Gilbert Romero

## **Legislative Council Staff**

Lon Engelking  
Principal Fiscal Analyst

## **Office of Legislative Legal Services**

Jane Yasui  
Staff Attorney

Cindy Johnson  
Legislative Assistant

# EXECUTIVE SUMMARY

## **Committee Charge**

---

The Executive Committee of the Legislative Council directed the Interim Committee on the Department of Military Affairs to study the operations of the department, including: 1) the roles of the state and federal government with respect to the department's mission; 2) the benefits provided by the department to the citizens of the state in relation to the state appropriation; and 3) the short-term and long-term goals of the department.

## **Committee Activities**

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The committee held three public meetings. During the first two meetings, testimony was given by the department and interested citizens concerning the operations of the department. The third meeting was devoted to committee recommendations and the discussion of proposed legislation. Testimony was heard concerning the budgetary support by the state and federal government, the various missions and programs run by the department, short-term and long-term plans for the department, and various citizen concerns about the structure of the department.

## **Committee Recommendations**

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The committee recommends four bills for consideration in the 1996 legislative session.

- Bill A changes the percentage reimbursed to Colorado National Guard members attending a state college or university for tuition assistance.
- Bill B modifies the procedures and the chain of command to follow on a complaint of wrongs.
- Bill C requires Senate confirmation of certain Colorado National Guard officers and establishes term limitations for serving in appointed positions.
- Bill D reaffirms that Colorado National Guard members must pay Colorado income tax unless they are exempt by the "Soldiers' and Sailors' Civil Relief Act of 1940."



# COMMITTEE REPORT

## **Committee Authority and Responsibilities**

---

On June 8, 1995, the Executive Committee of the Legislative Council passed an interim study resolution authorizing a study of the Department of Military Affairs. The committee's charge as set forth in the resolution was to study the operations of the department, including: 1) a delineation of the roles and responsibilities of the State of Colorado and the federal government with respect to the department's mission; 2) an analysis of the benefits provided by the department to the citizens of the state in relation to the state appropriations provided for the support of the department; and 3) the short-term and long-term plans for the department.

The committee consisted of nine members, three appointed by the President of the Senate and five appointed by the Speaker of the House of Representatives. The committee was directed by the resolution to report its findings and recommendations to the Legislative Council by October 15, 1995.

## **Committee Activities**

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*Mission of the Department of Military Affairs.* The role and mission of the Department of Military Affairs is threefold: state, federal, and local. The state mission is to provide for the protection or preservation of life and property during natural disasters and civil emergencies and to provide rapid and effective response to search, rescue, lifesaving and preservation needs of the state's citizens, visitors, and natural resources. The federal mission is to provide trained personnel, units, and equipment to the U.S. Army and the U.S. Air Force. The local mission is to participate as an active member and contributing citizen of the host communities in resolving problems facing the communities.

The Department of Military Affairs is authorized by Section 24-1-127, C.R.S., and consists of the Divisions of the Colorado National Guard and the Civil Air Patrol. Article IV, Section 5, of the Colorado Constitution provides that the Governor serves as Commander-in-Chief of the military forces of the state, except when they are called into actual service of the United States. The Adjutant General is appointed by the Governor, with the advice and consent of the Senate, and serves as the administrative head of the Department of Military Affairs.

The Colorado National Guard manages armories, support facilities, equipment, and guard units. The guard is available to respond to threats of national or state security, natural disasters, or civil emergencies. The Civil Air Patrol trains volunteer

personnel to assist in searches for missing persons and performs emergency medical airlifts.

***Colorado National Guard.*** The military force of the state functions under the provisions of Section 28-3-2, C.R.S., and Title 32 of the United States Code. The guard serves at the direction of the Governor to protect life and property and to preserve the state's internal security. It also recruits, trains, and maintains units and individuals ready to serve as part of the U.S. defense force in time of war.

The Colorado National Guard has federal and state responsibilities. The federal mission of the Colorado National Guard is to provide a reserve component of the U.S. Army and U.S. Air Force. Congress can order the Colorado National Guard to active duty if it decides that the nation needs to supplement its regular forces for national defense. The Colorado National Guard also participates, by units, in military operations and exercises. The guard uses equipment provided by the federal government to carry out its mission. The federal government also pays 100 percent of the personnel costs of the guard for drills, annual training, and full-time employees.

The state mission of the Colorado National Guard is to provide for the protection and preservation of life and property during natural disasters and civil emergencies. By law, the state mission is secondary to the federal mission. The Governor has the authority to order state guard units to active duty to provide military support for civil authorities during disaster and emergency situations. The Governor also delegates command and control of the guard to the Adjutant General during periods of state active duty. The state pays personnel salaries for the use of the guard to accomplish the state mission.

***Colorado Civil Air Patrol.*** In 1946, the Colorado General Assembly created and established the Department of Civil Air Patrol in order to give financial support to the patrol's search and rescue efforts. Under the Reorganization Act of 1968, the Department of Civil Air Patrol was changed to become the Colorado Division of Civil Air Patrol (CAP) within the Department of Military Affairs. The CAP serves as an auxiliary unit of the United States Air Force and functions under the provisions of Section 28-1-101, C.R.S.

The CAP has one classified staff employee who is paid through the state General Fund. Although the main duty of the CAP is search and rescue, its responsibilities also include civil defense and aerospace education. The composition of the patrol's 1,600 volunteers, who live throughout the state, is approximately 1,000 adult members and 600 training cadets. Equipment for the patrol is generally supplied by the U.S. Air Force.

***State and federal budget support.*** The Department of Military Affairs receives the vast majority of its budget appropriations from the federal government. Approximately 97 percent of the department's total budget is federally funded, with the

remaining 3 percent coming primarily from the state General Fund and a portion from cash funds. Only those budgetary items that are funded by the General Fund are directly controlled by the General Assembly.

Unlike many of the other state departments, the Department of Military Affairs has relatively few state-authorized programs. Therefore, the annual state budget of the department is fairly straightforward. Table 1 summarizes the department's fiscal year 1995-96 budget as shown in Senate Bill 95-214 (Long Bill).

**Table 1**

<b>DEPARTMENT OF MILITARY AFFAIRS FY 1995-96 APPROPRIATIONS</b>		
<b>Funding Source for State Appropriations</b>	<b>Dollar Amount</b>	<b>Full-Time Equivalent Employees (FTE)</b>
General Funds	\$2,713,087	26.7
Cash Funds	33,471	0.1
Federal Funds	2,397,865	53.2
Total State Funds	5,144,423	State Funded - 26.8 Federal Funded - 53.2
Non-Appropriated Federal Funds (funds that do not flow through the state accounting system)	\$109,910,073	1,039.0

The \$109.9 million shown in Table 1 as non-appropriated federal funds are funds that are **not** part of the appropriations process and are shown in the Long Bill for informational purposes only. The General Assembly does not have authority over these federal funds, which are often referred to as "off-budget." The majority of these dollars are paid in the form of salaries directly to the traditional guard for attendance of weekend duty and summer training camps. The FTE employees shown for this line item is the full time equivalent of approximately 5,500 guard personnel.

As Table 1 shows, state General Funds are appropriated for only 26.7 FTE jobs in the Department of Military Affairs. Table 2 categorizes these employees by job responsibility.

**Table 2**

<b>Area of Responsibility</b>	<b>Number of Employees</b>
Office of the Adjutant General	2
Human Resources	3
Finance and Budget	4
Contract Procurement	1
Engineering & Operations (armory maintenance)	12
Tuition Assistance Program	1
Program Administrators	2
Civil Air Patrol	1
Vacant	0.7

Other positions in the department are federally funded either through the pay of the traditional guard (such as the State Judge Advocate) or full-time employees (either civil service or Active Guard Reserve).

*Short-term and long-term goals of the Department of Military Affairs.* The Adjutant General, Brigadier General William A. Westerdahl, provided the committee with the following goals of the department. Under the command of the Governor and the guidance and direction provided by the General Assembly through the budgetary process, the department has the following short-term and long-term goals:

- to provide a trained staff to support the administrative needs of the Colorado National Guard;
- to provide administrative support to Civil Air Patrol missions;
- to support the federal, state, and local governments;

- to provide administrative support to the Colorado National Guard to maintain a force of approximately 5,500 guard personnel;
- to improve maintenance and repair for the existing three million square feet of floor space;
- to construct replacement facilities to support unit training requirements;
- to support the administrative requirements for the Office of the Adjutant General, including the tuition assistance program; military personnel; the Colorado Youth Conservation Corps (CYCC) program; and budget, fiscal, and operational functions;
- to support local community programs through joint use of armories;
- to support equal employment opportunity (EEO);
- to continue the quest for upgrades of equipment and manpower skills; and
- to maintain the operating budget at levels sufficient to carry out the mission of the department.

# SUMMARY OF RECOMMENDATIONS

## **Bill A — Concerning National Guard Tuition Assistance**

---

A member of the Colorado National Guard who is in pursuit of a bachelor's degree, postgraduate degree, associate degree, or a certificate of completion may currently apply to the Department of Military Affairs for up to seventy-five percent of the amount of tuition paid. In fiscal year 1995-96, the General Assembly appropriated \$406,753 in General Funds for this program. The committee recommends Bill A to modify the tuition assistance amount to at least fifty percent but not more than seventy-five percent of their tuition.

In addition, the bill prioritizes the allocation of the tuition assistance appropriation. First-term members of the Colorado National Guard would have top priority, with any remaining appropriation available to other members. Members are defined as enlisted members of the Colorado National Guard and officers of the guard who currently do not have a four-year degree and are currently enrolled in the tuition assistance program. The bill further clarifies which institutions of higher education are included within the program.

## **Bill B — Concerning Military Complaints of Wrongs**

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Bill B modifies the procedures whereby military members may petition for a redress of grievances against a commanding officer in the member's chain of command. If a member believes himself or herself to be wronged by the member's commanding officer, current law allows the member to make application to the commanding officer. If the commanding officer refuses redress, the member may complain to any superior commissioned officer, who forwards such complaint to the Governor through the Adjutant General.

The bill amends current law to establish a formal appeals process for complaints of wrongs within the member's chain-of-command. A response to the member's original petition and subsequent responses to appeals must be given to the member within forty-five days. If the member is dissatisfied with the redress afforded by the final appeal in the chain-of-command, the member may submit a complaint of wrongs directly to the Governor. The Governor may refer all complaints of wrongs to the Colorado National Guard Bureau Inspector General for an independent investigation and report pursuant to federal law. The Governor shall respond to the member within forty-five days. In addition, the bill prohibits any form of retaliation against a member who files a petition.

## **Bill C — Concerning National Guard Officers**

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The committee recommends Bill C, which allows the Governor, rather than the Adjutant General, to appoint an Assistant Adjutant General to the Colorado National Guard. Bill C requires the Governor to appoint, upon nomination by the Adjutant General and confirmation of the Senate, officers with the rank of General or higher, including the Assistant Adjutant Generals of the Army and of the Air Force; the air commander of the Air Force Division; and the command administrative officer of the Army Division. The bill specifies that no officer shall serve on the state headquarters staff and detachment for longer than eight consecutive years.

It further requires the Adjutant General to reassign the state headquarters staff and detachment or to discharge an officer who has served eight consecutive years. Officers will not be eligible for a new appointment to the state headquarters staff and detachment for a period of four years. The bill clarifies the existence of two divisions, rather than departments, in the Colorado National Guard.

## **Bill D — Concerning the Payment of State Income Tax by Members of the Military Forces**

---

The bill reaffirms that Colorado National Guard members must pay Colorado income tax unless they qualify under the provisions of the federal "Soldiers' and Sailors' Civil Relief Act of 1940." This federal act states that military members do not lose their residence or domicile while serving under military or naval orders. Therefore, a military member who is qualified under the "Soldiers' and Sailors' Civil Relief Act of 1940," and who is a non-resident serving duty in Colorado is not required to pay Colorado state income tax.

Testimony indicated that over 600 members of the Colorado National Guard are not paying state income tax. Further investigation by the Department of Military Affairs shows a total of 119 guard members who are currently not withholding Colorado taxes. The Department of Revenue has the authority to tax those members who are not exempt from the federal provisions.

# MATERIALS AVAILABLE

The following materials relevant to the Interim Committee on the Department of Military Affairs are available from the office of the Legislative Council.

## Legislative Council Staff Meeting Summaries

Summaries of 1995 Interim Committee on the Department of Military Affairs meetings held on September 5, September 6, and October 6

## Legislative Council Staff Memorandum

*Committee Charge and Staff Briefing*, September 5, 1995

## Reports

*Overview of the Department of Military Affairs*, William A. Westerdahl, Brigadier General, September 5, 1995

Three-ring binder submitted to the Interim Committee on the Department of Military Affairs, by the Department of Military Affairs, September 6, 1995, containing:

- Constitutional References
- Statutory References
- *Citizen Soldiers: An Illustrated History of the Army National Guard*, Renee Hylton, 1994
- *The Air National Guard - A Short Story*, Dr. Charles J. Gross, 1994
- *Economic Resource Impact Statement fiscal year 1994*, Buckley Air National Guard Base Aurora, Colorado
- *Equipment Quick Reference Directory*, Colorado National Guard, July 15, 1995

*An Argument Against the Expansion of Airspace for Low Altitude Training*, Custer County Action Association, September 1, 1995



**BILL A**

**A BILL FOR AN ACT**

**CONCERNING TUITION ASSISTANCE AT CERTAIN POST SECONDARY INSTITUTIONS  
FOR MEMBERS OF THE NATIONAL GUARD.**

**Bill Summary**

**"National Guard Tuition Assistance"**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)*

Department of Military Affairs Interim Committee. Specifies the minimum percentage of tuition the department of military affairs shall pay for tuition assistance for a member of the national guard. Offers tuition assistance for enlisted personnel only, with the exception of certain officers. Gives priority to first term enlisted members and then to officers who are currently receiving tuition assistance and have not yet completed a 4-year degree. Expands the definition of "designated institution of higher education" to include all schools of the university of Colorado.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 23-5-111.4 (2) and (3), Colorado Revised Statutes, 1995 Repl. Vol., are amended to read:

**23-5-111.4. Tuition for members of the national guard.** (2) (a) Any person who is a member of the Colorado national guard, upon being accepted for enrollment at any designated institution of higher education, shall be permitted to pursue studies leading toward a bachelor's degree, a postgraduate degree, an associate degree, or a certificate of completion with ~~up to~~ **AT LEAST FIFTY PERCENT BUT NOT MORE THAN seventy-five percent** of the cost of tuition paid by the department of military affairs, subject to available appropriations,

for so long as such person remains a member of the Colorado national guard, but such tuition payments shall not be made for more than one hundred thirty-two semester hours or one hundred ninety-eight quarter hours.

(b) THE DEPARTMENT SHALL ALLOCATE THE MONEYS PAID FOR THE COST OF TUITION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) IN THE FOLLOWING ORDER:

(I) TO ENLISTED MEMBERS IN THEIR FIRST TERM OF SERVICE; AND

(II) TO ANY OTHER ENLISTED MEMBER OR TO ANY OFFICER WHO IS CURRENTLY RECEIVING THE TUITION ASSISTANCE PROVIDED BY THIS SECTION AND WHO HAS NOT YET COMPLETED A FOUR-YEAR DEGREE.

(c) ~~In addition,~~ In order to qualify for the tuition assistance authorized by this section, such member:

(I) Must meet the criteria for eligibility, as established by rules and regulations pursuant to subsection (7) of this section; and

(II) Agree to serve two years in the Colorado national guard for each year of tuition assistance granted.

(d) FOR THE PURPOSES OF THIS SECTION, "MEMBER" MEANS AN ENLISTED MEMBER OF THE NATIONAL GUARD OR ANY OFFICER DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (2). (3) For the purposes of this section, "designated institution of higher education" means the university of southern Colorado, Adams state college, Mesa state college, Metropolitan state college of Denver, Fort Lewis college, Western state college of Colorado, all independent area vocational schools, all local district colleges, the university of northern Colorado, the university of Colorado at ~~Denver, the university of Colorado at Colorado Springs, the university of Colorado at Boulder, the school of nursing at the university of Colorado~~

~~health sciences center~~, based on the amount of in-state tuition for general studies at the university of Colorado at Boulder, Colorado state university, the Colorado school of mines, and all community colleges governed by the state board for community colleges and occupational education.

**SECTION 2. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

**BILL B**

**A BILL FOR AN ACT**

CONCERNING PROCEDURES FOR FILING COMPLAINTS OF WRONGS AGAINST  
COMMANDING OFFICERS IN THE STATE MILITARY FORCES.

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**Bill Summary**

**"Military Complaints Of Wrongs"**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)*

Department of Military Affairs Interim Committee. Creates a procedure for military members to petition for a redress of grievances against a commanding officer in the member's chain of command. Requires that such petitions be delivered through the member's chain of command. Specifies the procedures to appeal a decision on such petition. Prohibits any form of retaliation against a complainant who files a petition.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 28-3.1-604, Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

**28-3.1-604. Complaints of wrongs.** (1) Any member of the state military forces who believes himself OR HERSELF wronged by his ANY commanding officer and who, upon application to that commanding officer, is refused redress may complain to any superior commissioned officer, who shall forward the complaint to the governor through the adjutant general. The governor, after investigation, shall take such measures as he deems proper IN HIS OR HER CHAIN OF COMMAND MAY PETITION FOR REDRESS. THE COMPLAINANT SHALL DELIVER THE PETITION THROUGH HIS OR HER MILITARY CHAIN OF COMMAND. THE

PETITION SHALL SET FORTH FACTS IN SUPPORT OF THE PETITION AND SHALL STATE THAT THE FACTS ARE TRUE TO THE BEST OF THE COMPLAINANT'S KNOWLEDGE AND BELIEF. THE PERSON TO WHOM THE PETITION IS DELIVERED SHALL RESPOND TO THE PETITION WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION AND SHALL ADDRESS EACH ALLEGATION OF THE PETITION.

(2) IF THE COMPLAINANT IS DISSATISFIED WITH THE REDRESS AFFORDED BY THE RESPONSE PREPARED PURSUANT TO SUBSECTION (1) OF THIS SECTION AND THE COMPLAINANT REASONABLY BELIEVES THAT HE OR SHE HAS EVIDENCE THAT REBUTS THE FINDINGS SET FORTH IN THE RESPONSE, THE COMPLAINANT MAY APPEAL TO THE MILITARY REPORTING OFFICIAL OF THE OFFICER WHO RESPONDED TO THE PETITION FOR REDRESS. THIS APPELLATE AUTHORITY SHALL RESPOND TO THE APPEAL WITHIN FORTY-FIVE DAYS OF RECEIVING THE APPEAL, SHALL ADDRESS EACH ALLEGATION OF THE APPEAL, AND SHALL DELIVER A COPY OF THE RESPONSE TO THE ADJUTANT GENERAL. THE PROCEDURES SET FORTH IN THIS SUBSECTION (2) SHALL APPLY THROUGH EACH STEP OF THE COMPLAINANT'S CHAIN OF COMMAND UNTIL THE COMPLAINANT REACHES THE ADJUTANT GENERAL.

(3) IF THE COMPLAINANT IS DISSATISFIED WITH THE REDRESS AFFORDED BY AN APPEAL PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE COMPLAINANT MAY SUBMIT A COMPLAINT OF WRONGS DIRECTLY TO THE GOVERNOR. THE GOVERNOR MAY REFER ALL COMPLAINTS OF WRONGS TO THE NATIONAL GUARD BUREAU INSPECTOR GENERAL FOR AN INDEPENDENT INVESTIGATION AND REPORT PURSUANT TO FEDERAL LAW. UPON RECEIPT OF SUCH REPORT, THE GOVERNOR SHALL DELIVER TO THE COMPLAINANT ALL PORTIONS OF THE REPORT THAT MAY BE RELEASED PURSUANT TO FEDERAL LAW. THE GOVERNOR SHALL RESPOND TO

THE COMPLAINT WITHIN FORTY-FIVE DAYS OF RECEIVING THE COMPLAINT AND SHALL ADDRESS EACH ALLEGATION OF THE COMPLAINT.

(4) RETALIATION IN ANY FORM AGAINST A COMPLAINANT FOR PURSUING THE REMEDIES DESCRIBED IN THIS SECTION IS PROHIBITED.

**SECTION 2. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

**BILL C**

**A BILL FOR AN ACT**

CONCERNING NATIONAL GUARD OFFICERS.

**Bill Summary**

**"National Guard Officers"**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)*

Department of Military Affairs Interim Committee. Allows the governor, rather than the adjutant general, to appoint an assistant adjutant general to the national guard. Requires the governor to appoint, upon nomination by the adjutant general and senate confirmation, the general officers, including the assistant adjutant generals of the army and of the air force; the air commander of the air force division; and the command administrative officer of the army division. Creates a term limit of 8 consecutive years for national guard officers of the state headquarters staff and detachment. Requires the adjutant general to reassign or discharge such officers after serving for 8 consecutive years. Prohibits a return assignment to the state headquarters staff and detachment for 4 years. Clarifies the existence of two divisions, rather than departments, in the national guard. Makes conforming amendments.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 28-3-105 (4), Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

**28-3-105. Adjutant general - assistants.** (4) ~~He~~ THE ADJUTANT GENERAL SHALL NOMINATE AN ASSISTANT ADJUTANT GENERAL TO COMMAND EACH DIVISION OF THE NATIONAL GUARD PURSUANT TO SECTION 28-3-302 AND may appoint ~~an assistant adjutant general, a state quartermaster, and~~ necessary administrative and clerical assistants.

**SECTION 2.** 28-3-301, Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

**28-3-301. State staff - number and grades.** The state headquarters shall contain a staff and detachment and shall be divided into a ~~department~~ DIVISION of the army and a ~~department~~ DIVISION of the air force. Each ~~department~~ DIVISION shall be commanded by an officer of the Colorado national guard. Said officer may be appointed by the governor, UPON NOMINATION BY THE ADJUTANT GENERAL AND WITH THE ADVICE AND CONSENT OF THE SENATE, to the rank of brigadier general or to such higher rank in which ~~he~~ THE OFFICER may be federally recognized. The number and grades of all other officers and enlisted ~~men~~ PERSONS in the state staff and detachment shall be as prescribed by federal or state law, but, in case of war, invasion, insurrection, riot, or imminent danger of any such emergency, the governor may temporarily increase such forces to meet such emergency, and retired officers who are physically qualified may be assigned to such duty.

**SECTION 3.** 28-3-302, Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

**28-3-302. Appointment of officers - term limits.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, the officers of the state staff and detachment shall be selected and appointed by the adjutant general and commissioned by the governor if such appointees at the time of appointment shall have been, for at least three years immediately prior to appointment, a regularly commissioned officer of the national guard; except that, where there is no qualified person in the national guard available to fill a vacancy on the

staff, an appointment may be made by the adjutant general if the individual so appointed qualifies for a commission pursuant to section 28-3-303.

(2) THE GOVERNOR SHALL APPOINT THE FOLLOWING OFFICERS, UPON NOMINATION BY THE ADJUTANT GENERAL AND WITH THE ADVICE AND CONSENT OF THE SENATE:

(a) ALL OFFICERS WITH THE RANK OF GENERAL OR HIGHER, INCLUDING THE ASSISTANT ADJUTANT GENERAL OF THE DIVISION OF THE ARMY AND THE ASSISTANT ADJUTANT GENERAL OF THE DIVISION OF THE AIR FORCE;

(b) THE AIR COMMANDER OF THE DIVISION OF THE AIR FORCE; AND

(c) THE COMMAND ADMINISTRATIVE OFFICER OF THE DIVISION OF THE ARMY.

(3) NO OFFICER SHALL SERVE ON THE STATE HEADQUARTERS STAFF AND DETACHMENT FOR LONGER THAN EIGHT CONSECUTIVE YEARS. THE ADJUTANT GENERAL SHALL REASSIGN FROM THE STATE HEADQUARTERS STAFF AND DETACHMENT OR SHALL DISCHARGE AN OFFICER WHO HAS SERVED ON THE STATE HEADQUARTERS STAFF AND DETACHMENT FOR EIGHT CONSECUTIVE YEARS. SUCH OFFICER SHALL NOT BE ELIGIBLE FOR A NEW APPOINTMENT TO THE STATE HEADQUARTERS STAFF AND DETACHMENT FOR A PERIOD OF FOUR YEARS.

**SECTION 4.** 28-3-304, Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

**28-3-304. Commissions - examinations - assignments.** Any person appointed, promoted, and commissioned on or after April 14, 1955, as an officer of the national guard shall successively pass such examinations and tests as to his physical, moral, and professional fitness as are prescribed by federal law. Officers shall be commissioned by the governor, and the commissions

shall designate the armed service, staff corps, or ~~department~~ DIVISION in which they are appointed. They will be assigned to duty within each organization by the immediate commander thereof.

**SECTION 5.** 28-3-1201, Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

**28-3-1201. Long service medal.** A medal, designated as the "long service medal", shall be awarded each officer and enlisted ~~man~~ PERSON of the national guard of Colorado who has served honestly and faithfully in any organization or ~~department~~ DIVISION of the national guard of Colorado, in state or federal service, for a period of ten years, not necessarily consecutive, and, for every period of five years thereafter, there shall be awarded a suitable bar to be worn on the ribbon of the medal.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

**BILL D**

**A BILL FOR AN ACT**

CONCERNING THE PAYMENT OF STATE INCOME TAX BY MEMBERS OF THE  
MILITARY FORCES.

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**Bill Summary**

**"Income Taxes Of Military Members"**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)*

Department of Military Affairs Interim Committee. Reaffirms in the national guard provisions that state military members are subject to income taxation for compensation received for services performed in this state. Clarifies that nonsalaried military members are also required to pay the appropriate state income tax on pay and allowances received from the state while engaging in any service ordered by the governor. Specifies that the income tax requirement does not apply to members who are covered under the federal "Soldiers' and Sailors' Civil Relief Act of 1940".

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Part 5 of article 3 of title 28, Colorado Revised Statutes, 1989 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

**28-3-508. Payment of state income tax.** EVERY MEMBER OF THE MILITARY FORCES OF THE STATE WHO RECEIVES INCOME FOR SERVICES PERFORMED IN THIS STATE SHALL PAY THE APPROPRIATE STATE INCOME TAX IMPOSED ON INDIVIDUALS AS REQUIRED BY SECTION 39-22-104, C.R.S. THIS SECTION DOES NOT APPLY TO ANY MEMBER OF THE MILITARY FORCES WHO IS

COVERED UNDER THE FEDERAL "SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940", 50 APP. U.S.C. SEC. 501 ET SEQ.

**SECTION 2.** 28-3-904, Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

**28-3-904. Pay and allowances.** (1) Every member of the military forces not salaried as such shall receive from the state, while engaged in any service ordered by the governor, pay and allowances at the rate paid or allowed by law to members of similar rank and length of service in the regular army or regular air force of the United States, as the case may be, but no such member shall receive less than twenty dollars per day.

(2) EVERY MEMBER OF THE MILITARY FORCES WHO RECEIVES THE PAY AND ALLOWANCES PROVIDED IN SUBSECTION (1) OF THIS SECTION SHALL PAY THE APPROPRIATE STATE INCOME TAX IMPOSED ON INDIVIDUALS AS REQUIRED BY SECTION 39-22-104, C.R.S. THIS SUBSECTION (2) DOES NOT APPLY TO ANY MEMBER OF THE MILITARY FORCES WHO IS COVERED UNDER THE FEDERAL "SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940", 50 APP. U.S.C. SEC. 501 ET SEQ.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.