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**HOUSE BILL NO. 1372**

Offered January 31, 2002

*A BILL to amend and reenact § 44-93 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 44-93.1 through 44-93.5, relating to reemployment guarantees for members of the Virginia National Guard, Virginia State Defense Force and naval militia.*

Patrons—Weatherholtz, Athey, Black, Byron, Hamilton, Landes, Lingamfelter, Marshall, R.G., McDougle, McQuigg, Nutter, O'Bannon, O'Brien, Oder, Rapp, Reese, Sherwood and Welch

Unanimous consent to introduce

Referred to Committee on Militia, Police and Public Safety

**Be it enacted by the General Assembly of Virginia:**

**1. That § 44-93 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 44-93.1 through 44-93.5 as follows:**

§ 44-93. Leaves of absence for employees of Commonwealth or political subdivisions.

All officers and employees of the Commonwealth or of any political subdivision of the Commonwealth who are former members of the armed services or members of the organized reserve forces of any of the armed services of the United States, National Guard, or naval militia shall be entitled to leaves of absence from their respective duties, without loss of seniority, accrued leave, or efficiency rating, on all days during which they are engaged in federally funded military duty, to include training duty, or when called forth by the Governor pursuant to the provisions of § 44-75.1 or § 44-78.1. There shall be no loss of pay during such leaves of absence, except that paid leaves of absence for federally funded military duty, to include training duty, shall not exceed fifteen workdays per federal fiscal year, and except that no officers or employees shall receive paid leave for more than fifteen workdays per federally funded tour of active military duty. When relieved from such duty, they shall be restored to positions held by them when ordered to duty. *If the office or position has been abolished or otherwise has ceased to exist during such leave of absence, they shall be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which they are qualified.* For the purposes of this section, with respect to employees of the Commonwealth or its political subdivisions who do not normally work approximately equal workdays on five or more days of each calendar week, the term "workday" shall mean 1/260 of the total working hours such employee would be scheduled to work during an entire federal fiscal year, not taking into account any state holidays, annual leave, military leave, or other absences.

§ 44-93.1. *Extended military leave for employees of Commonwealth or political subdivisions.*

Notwithstanding the provisions of § 44-93, the Commonwealth or any political subdivision of the Commonwealth may supplement the military pay of its officials and employees who are reservists or national guard members called to active military service in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to active military duty. The employing authority may also, in its discretion, continue to provide any health insurance and other existing benefits to such officials and employees.

§ 44-93.2. *Leaves of absence from non-governmental employment.*

A member of the Virginia National Guard, Virginia State Defense Force or naval militia called to active state duty pursuant to the provisions of § 44-75.1 or § 44-78.1 by the Governor shall have the right to take leave without pay from his non-governmental employment. No member of the National Guard, Virginia State Defense Force or naval militia shall be forced to use or exhaust his vacation or other accrued leaves from his non-governmental employment for a period of active service. The choice of leave shall be solely within the discretion of the member. Upon honorable release from state duty, such member shall be entitled to all of the reemployment rights provided for in this section.

§ 44-93.3. *Reemployment rights.*

Upon release from active state duty, a member of the Virginia National Guard, Virginia State Defense Force or naval militia employee shall make written application to his previous employer for reemployment within five days of his release from duty or from hospitalization continuing after release. If the employee is still qualified for his previous employment, he shall be immediately restored to his previous position or to a position of like seniority, status and salary, unless the employer's circumstances now make the restoration unreasonable. If the employee is no longer qualified for his previous position, he shall be placed in another position, for which he is qualified, and which will give him appropriate seniority, status and salary, unless the employer's circumstances now make the

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HB1372

58 placement unreasonable.

59 § 44-93.4. Discrimination against persons who serve in the Virginia National Guard and acts of  
60 reprisal prohibited.

61 A. It is the policy of this State that all individuals shall be afforded the right to perform, apply to  
62 perform, or have an obligation to perform service in the Virginia National Guard, Virginia State  
63 Defense Force or naval militia without fear of discrimination or retaliatory action from their employer  
64 or prospective employer on the basis of that membership, application for membership, performance of  
65 service, application for service, or obligation.

66 B. A member of the Virginia National Guard, Virginia State Defense Force or naval militia who  
67 performs, has performed, applies to perform, or has an obligation to perform state service shall not be  
68 denied initial employment, reemployment, retention in employment, promotion, or any benefit of  
69 employment by an employer on the basis of that membership, application for membership, performance  
70 of service, application for service, or obligation.

71 C. A person shall be considered to have denied a member of the Virginia National Guard, Virginia  
72 State Defense Force or naval militia initial employment, reemployment, retention in employment,  
73 promotion, or a benefit of employment in violation of this section if the member's membership,  
74 application for membership, performance of service, application for service, or obligation for service is  
75 a motivating factor in that person's action, unless the person can prove by the greater weight of the  
76 evidence that the same unfavorable action would have taken place in the absence of the member's  
77 membership, application for membership, performance of service, application for service, or obligation.

78 D. Nothing in this section shall be construed to require a person to pay salary or wages to a  
79 member of the Virginia National Guard, Virginia State Defense Force or naval militia during the  
80 member's period of active service.

81 § 44-93.5. Penalties for denial.

82 If any employer fails or refuses to comply with the provisions of §§ 44-93.2, 44-93.3 and 44-93.4, the  
83 circuit court having jurisdiction over the employer's place of business may, upon the filing of a motion,  
84 petition, or other appropriate pleading by the employee, require the employer to comply with § 44-93.2,  
85 44-93.3 and 44-93.4 and to compensate the employee for any loss of wages or benefits suffered by  
86 reason of the employer's unlawful failure or refusal.