

2001 Second Extraordinary Session
of the
Seventy-Ninth General Assembly
of the
State of Iowa

CHAPTER 1
HOMELAND SECURITY AND DEFENSE —
MILITARY DUTY AND EMERGENCY MANAGEMENT SERVICES

H.F. 762

AN ACT relating to homeland security by authorizing the governor and other state officers to use state resources for, defend against, and manage the consequences of a terrorist attack in this state, and providing a retroactive effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 29A.1, subsection 1, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

1. "Active state service" means training or operational duty or other service authorized and performed under the provisions of 32 U.S.C. or other federal law or regulation as part of the Iowa army national guard or Iowa air national guard and paid for with federal funds.

Sec. 2. Section 29A.1, subsection 3, Code 2001, is amended to read as follows:

3. "Federal service" means duty authorized and performed under the provisions of 10 U.S.C. ~~or 32 U.S.C., § 502-505 which includes unit training assemblies commonly known as "drills", annual training, rifle marksmanship, full time training for school purposes and recruiting as part of the active military forces of the United States or the army national guard of the United States or the air national guard of the United States.~~

Sec. 3. Section 29A.1, subsection 4, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

4. "Homeland defense" means the protection of state territory, population, and critical infrastructure and assets against attacks from within or without the state.

Sec. 4. Section 29A.1, subsection 7, Code 2001, is amended to read as follows:

7. "National guard" means the Iowa units, detachments and organizations of the army national guard of the United States, ~~and the air national guard of the United States, the army~~

national guard, and the air national guard as those forces are defined in ~~the National Defense Act and its amendments, the Iowa army national guard and the Iowa air national guard~~ 10 U.S.C. § 101.

Sec. 5. Section 29A.1, subsection 9, Code 2001, is amended to read as follows:

9. "On duty" means training, including unit training assemblies, ~~all~~ and other training, operational duty, and other service which may be required under state or federal law, regulations, or orders, and the necessary travel of an officer or enlisted person to the place of performance and return home after performance of that duty, but does not include federal service ~~under 10 U.S.C.~~

Sec. 6. Section 29A.1, Code 2001, is amended by adding the following new subsection:
NEW SUBSECTION. 10A. "State active duty" means duty authorized and performed under section 29A.8 or 29A.9 and paid for with state funds. "State active duty" also includes serving as the adjutant general, a deputy adjutant general, or the state quartermaster.

Sec. 7. Section 29A.4, Code 2001, is amended to read as follows:

29A.4 ORGANIZATION — ARMAMENT — EQUIPMENT AND DISCIPLINE.

The organization, armament, equipment and discipline of the national guard, and the militia when called into ~~active state service~~ active duty, except as hereinafter specifically provided, shall be the same as that which is now or may be hereafter prescribed under the provisions of federal law and regulations as to those requirements which are mandatory therein, but as to those things which are optional therein they shall become effective when an order or regulation to that effect shall have been promulgated by the governor.

Sec. 8. Section 29A.6, Code 2001, is amended to read as follows:

29A.6 MILITARY FORCES OF STATE.

The military forces of the state of Iowa shall consist of the army national guard, the air national guard, and the militia.

Sec. 9. Section 29A.7, Code 2001, is amended to read as follows:

29A.7 COMMANDER IN CHIEF.

The governor is the commander in chief of the military forces, except when they are in federal service. The governor may employ the military forces of the state for the defense or relief of the state, the enforcement of its laws, the protection of life and property, emergencies resulting from disasters or public disorders as defined in section 29C.2, including homeland security and defense duties, and parades and ceremonies of a civic nature.

Sec. 10. Section 29A.8, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

29A.8 STATE ACTIVE DUTY.

1. The governor may order into state active duty the military forces of the state, including retired members of the national guard, both army and air, as the governor deems proper, under command of an officer as the governor may designate under one or more of the following circumstances:

a. In case of insurrection or invasion, or imminent danger of insurrection or invasion.

b. For the purpose of aiding the civil authorities of any political subdivision of the state in maintaining law and order in the subdivision in cases of breaches of the peace or imminent danger of breaches of the peace, if the law enforcement officers of the subdivision are unable to maintain law and order, and the civil authorities request the assistance.

c. For the purposes of performing homeland defense or homeland security duties.

2. If circumstances necessitate the establishment of a military district under martial law and the general assembly is not convened, the military district shall be established only after the governor has issued a proclamation convening an extraordinary session of the general assembly.

Sec. 11. NEW SECTION. 29A.8A ACTIVE STATE SERVICE.

If federal funding and authorization exist for this purpose, the governor may order to active state service the military forces of the Iowa army national guard or Iowa air national guard as the governor may deem appropriate for the purposes of homeland security, homeland defense, or other duty.

Sec. 12. Section 29A.9, unnumbered paragraph 1, Code 2001, is amended to read as follows:

The governor may order the national guard into training for any period. The governor may order the organizations or personnel of the national guard or persons who have retired from the national guard, to ~~active state service, or active duty, or to assemble~~ for purposes of security, drill, instruction, parade, ceremonies of a civic nature, guard, recruiting and escort duty, and schools of instruction as a student or instructor, including the Iowa military academy, and prescribe all regulations and requirements for those duties.

Sec. 13. Section 29A.10, unnumbered paragraph 3, Code 2001, is amended to read as follows:

The governor may appoint an officer of the national guard to serve as special investigator for a period determined by the governor. Service as special investigator shall be ~~active state service~~ active duty. The special investigator shall report to and serve at the pleasure of the governor. The duty of special investigator shall be assigned as additional duty. The special investigator shall not be the person designated as inspector general pursuant to federal national guard bureau regulation.

Sec. 14. Section 29A.11, Code 2001, is amended to read as follows:

29A.11 ADJUTANT GENERAL — APPOINTMENT AND TERM.

There shall be an adjutant general of the state who shall be appointed and commissioned by the governor subject to confirmation by the senate and who shall serve at the pleasure of the governor. The rank of the adjutant general shall be at least that of brigadier general and the adjutant general shall hold office for a term of four years beginning and ending as provided in section 69.19. At the time of appointment the adjutant general shall be a federally recognized commissioned officer in the United States army or air force, the army or air national guard, the army or air national guard of the United States, or the United States army or air force reserve who has reached at least the grade of colonel and who is or is eligible to be federally recognized at the next higher rank.

Sec. 15. Section 29A.27, unnumbered paragraphs 1, 2, 3, and 4, Code 2001, are amended to read as follows:

Officers and enlisted persons while in ~~active state service~~ active duty shall receive the same pay, per diem, and allowances as are paid for the same rank or grade for federal service ~~in the armed forces of the United States~~. However, a person shall not be paid at a base rate of pay of less than one hundred dollars per calendar day of ~~active state service~~ active duty.

In the event any officer or enlisted person shall be killed while on duty or in ~~active state service~~ active duty, in line of duty, or shall die as the result of injuries received or as a result of illness or disease contracted while on duty or in ~~active state service~~ active duty, in line of duty, dependents, as defined by the workers' compensation law of the state, shall receive the maximum compensation provided by ~~the said~~ such law.

Any officer or enlisted person who suffers injuries or contracts a disease causing disability, in line of duty, while on duty or in ~~active state service~~ active duty, shall receive hospitalization and medical treatment, and during the period that the officer or enlisted person is totally disabled from returning to military duty the officer or enlisted person shall also receive the pay and allowances of the officer's or enlisted person's grade. In the event of partial disability, the officer or enlisted person shall be allowed partial pay and allowances as determined by an evaluation board of three officers to be appointed by the adjutant general. At least one member of the board shall be a medical officer.

Any claim for death, illness, or disease contracted in line of duty while on duty or in ~~active state service~~ active duty, shall be filed with the adjutant general within six months from the date of death or contraction of the illness or disease.

Sec. 16. Section 29A.28, Code 2001, is amended to read as follows:

29A.28 LEAVE OF ABSENCE OF CIVIL EMPLOYEES.

All officers and employees of the state, or a subdivision thereof, or a municipality other than employees employed temporarily for six months or less, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, shall, when ordered by proper authority to state active duty, active state service or federal service, be entitled to a leave of absence from such civil employment for the period of ~~such state active duty~~, active state service, or federal service, without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence. The proper appointing authority may make a temporary appointment to fill any vacancy created by such leave of absence.

Sec. 17. Section 29A.29, Code 2001, is amended to read as follows:

29A.29 PAYMENT FROM TREASURY — EXCEPTION.

When in ~~active state service~~ active duty, the compensation of officers and enlisted persons and expenses of the national guard and claims for death, injury and illness of the members thereof, incurred in line of duty, shall be paid out of any funds in the state treasury not otherwise appropriated. However, if funds for compensation and expenses have been appropriated for compensation and expenses of persons on full-time ~~active state service~~ active duty pursuant to a specific Act of the general assembly, such persons shall be paid from funds appropriated pursuant to such Act.

Sec. 18. Section 29A.43, Code 2001, is amended to read as follows:

29A.43 DISCRIMINATION PROHIBITED — LEAVE OF ABSENCE.

A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer or enlisted person of the military forces of the state, or hinder or prevent the officer or enlisted person from performing any military service the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States ordered to temporary ~~active duty~~, as defined in section 29A.1, for the ~~any purpose of military training or ordered on active state service~~ is entitled to a leave of absence during the period of the duty or service, from the member's private employment, other than employment of a temporary nature, and upon completion of the duty or service the employer shall restore the person to the position held prior to the leave of absence, or employ the person in a similar position. However, the person shall give evidence to the employer of satisfactory completion of the training or duty, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment. A person violating a provision of this section is guilty of a simple misdemeanor.

Sec. 19. Section 29A.71, Code 2001, is amended to read as follows:

29A.71 PAY AND ALLOWANCES.

Officers and enlisted personnel of the Iowa state guard while in ~~active state service~~ active duty shall receive the same pay, allowances, and compensation as provided by law for members of the Iowa national guard.

Sec. 20. Section 29C.2, subsection 1, Code 2001, is amended to read as follows:

1. "Disaster" means man-made and natural occurrences, such as fire, flood, drought,

earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health, and safety of the people or which damage and destroy public or private property. The term includes ~~enemy~~ attack, sabotage, or other hostile action from within or without the state.

Sec. 21. Section 29C.2, Code 2001, is amended by adding the following new subsection: NEW SUBSECTION. 1A. "Homeland security" means the detection, prevention, preemption, deterrence of, and protection from attacks targeted at state territory, population, and infrastructure.

Sec. 22. Section 29C.5, Code 2001, is amended to read as follows:

29C.5 EMERGENCY MANAGEMENT DIVISION.

An emergency management division is created within the department of public defense. The emergency management division shall be responsible for the administration of emergency planning matters, including emergency resource planning in this state, ~~co-operation~~ cooperation with and support of the civil air patrol, homeland security activities, and ~~co-ordination~~ coordination of available services in the event of a disaster.

Sec. 23. Section 29C.8, subsection 2, Code 2001, is amended to read as follows:

2. The administrator shall be vested with the authority to administer emergency management and homeland security affairs in this state and shall be responsible for preparing and executing the emergency management and homeland security programs of this state subject to the direction of the adjutant general.

Sec. 24. Section 29C.8, subsection 3, paragraphs a, b, and c, Code 2001, are amended to read as follows:

a. Prepare a comprehensive plan and emergency management program for homeland security, disaster preparedness, response, recovery, mitigation, emergency operation, and emergency resource management of this state. The plan and program shall be integrated into and coordinated with the homeland security and emergency plans of the federal government and of other states to the fullest possible extent and coordinate the preparation of plans and programs for emergency management of the political subdivisions and various state departments of this state. The plans shall be integrated into and coordinated with a comprehensive state homeland security and emergency program for this state as coordinated by the administrator of the emergency management division to the fullest possible extent.

b. Make such studies and surveys of the industries, resources and facilities in this state as may be necessary to ascertain the vulnerabilities of critical state infrastructure and assets to attack and the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof.

c. Provide technical assistance to any local emergency commission or joint commission requiring the assistance in the development of an emergency management or homeland security program.

Sec. 25. Section 135.11, Code 2001, as amended by 2001 Iowa Acts, chapter 58, section 3, chapter 122, section 1, and chapter 184, section 6, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. Conduct and maintain a statewide risk assessment of any present or potential danger to the public health from biological agents. For this purpose, an employee or agent of the department may enter into and examine any premises containing potentially dangerous biological agents. However, the owner or person in charge of the premises shall be notified. If the owner or person in charge refuses admittance, the department may obtain administrative search warrants under section 808.14. Based upon findings of the risk assessment and examination of the premises, the director may order safeguards or take any other action necessary to protect the public health pursuant to rules adopted to implement this subsection.

Sec. 26. Section 669.14, subsection 7, Code 2001, is amended to read as follows:

7. A claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when the damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "~~active state service~~ active duty" as defined in section 29A.1, ~~subsection 1.~~

Sec. 27. TASK FORCE ON HOMELAND SECURITY AND DEFENSE.

1. A task force is created to consider and report on the state's preparedness to respond to emergencies that threaten the state's security. The task force shall study issues relating to the detection, prevention, preemption, and deterrence of, and protection against, attacks targeted at state territory, population, and infrastructure. The task force shall solicit information from local and state government officials, from the Iowa national guard, and from any other person or entity deemed appropriate relating to the state's preparedness to respond to emergencies that threaten the state's security.

2. The members of the task force shall be appointed as follows:

- a. One member appointed by the governor.
- b. One member appointed by the majority leader of the senate.
- c. One member appointed by the speaker of the house of representatives.
- d. One member appointed by the minority leader of the senate.
- e. One member appointed by the minority leader of the house of representatives.

3. The task force shall report to the general assembly and the governor by January 15, 2002.

Sec. 28. RETROACTIVE EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment, is retroactively applicable to September 11, 2001, and is applicable on and after that date, except that sections 29 through 35 of this Act shall not be applied retroactively.

Sec. 29. DEFINITION — MILITARY SERVICE. For the purposes of sections 29 through 35, "military service" means full-time active state service, as defined in section 29A.1, or full-time state active duty, as defined in section 29A.1, for a period of at least ninety consecutive days.

Sec. 30. EVICTION OR DISTRESS DURING MILITARY SERVICE — STAY — PENALTY FOR NONCOMPLIANCE — ALLOTMENT OF PAY FOR PAYMENT.¹

1. No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed one thousand two hundred dollars per month, occupied chiefly for dwelling purposes by the spouse, child, or other dependent of a person in military service, except upon leave of court granted upon application or granted in an action or proceeding affecting the right of possession.

2. On any such application as provided in subsection 1, or in any such action as provided in subsection 1, the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months. Where such stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application, to relief in respect of such premises similar to that granted persons in military service in sections 31 and 32 of this Act to such extent and for such period as may appear to the court to be just.

Sec. 31. INSTALLMENT CONTRACTS FOR PURCHASE OF PROPERTY.

1. No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment, from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise

¹ According to enrolled Act; penalty and allotment provisions not included in Act as enrolled

any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment due or for any other breach of its terms occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction.

2. Upon the hearing of such action as provided in subsection 1, the court may order the repayment of prior installments or deposits or any part, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on the person's behalf, order a stay of proceedings as the court deems just, unless in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties.

Sec. 32. MORTGAGES, TRUST DEEDS, OR OTHER SECURITY.

1. The provisions of this section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by the person which obligations originated prior to the person's period of military service.

2. In any proceeding commenced in any court during the period of military service to enforce such obligation as provided in subsection 1 arising out of nonpayment of any sum due or out of any other breach of the terms of the mortgage, trust deed, or other security occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on the defendant's behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of the defendant's military service, do any of the following:

a. Stay the proceedings for such period as the court deems just.

b. Make such other disposition of the case as may be equitable to conserve the interests of all parties.

3. No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation as provided in subsection 1, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made during the period of military service or within three months thereafter, except pursuant to an agreement between the parties, unless upon an order previously granted by the court and a return thereto made and approved by the court.

Sec. 33. TERMINATION OF LEASES BY LESSEES.

1. The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service.

2. Any such lease as provided in subsection 1 may be terminated by notice in writing delivered to the lessor or to the lessor's agent by the lessee at any time following the date of the beginning of the period of military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor or to the lessor's agent and depositing the notice in the United States mail. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination

shall be refunded by the lessor. Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

Sec. 34. **MAXIMUM RATE OF INTEREST.** No obligation or liability bearing interest at a rate in excess of six percent per year incurred by a person in military service before that person's entry into that service shall, during any part of the period of military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of six percent per year is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges, except bona fide insurance, in respect of such obligation or liability.

Sec. 35. **PROVISIONS APPLY NOTWITHSTANDING CONTRARY CODE PROVISIONS.** Sections 29 through 34 of this Act apply notwithstanding any contrary provision of state law, which may include but is not limited to Titles XIII, XIV, and XV.

Sec. 36. Sections 29 through 35 of this Act are repealed on January 31, 2002.

Approved November 14, 2001

CHAPTER 2

STATE BUDGETING PRACTICES

H.F. 760

AN ACT relating to the state general fund expenditure limitation and budgeting practices and including effective date and applicability provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 2.47A, subsection 1, paragraph c, Code 2001, is amended by striking the paragraph.

Sec. 2. Section 8.6, subsection 14, Code 2001, is amended by striking the subsection.

Sec. 3. Section 8.6, subsection 15, Code 2001, is amended to read as follows:

15. **CAPITAL PROJECT PLANNING AND BUDGETING AUTHORITY.** To call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under ~~subsections~~ subsection 13 ~~and 14~~. All state agencies, upon the request of the director, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

Sec. 4. Section 8.21, unnumbered paragraph 2, Code 2001, is amended to read as follows:

If the governor is required to use a lesser amount in the budget process because of a later meeting of the state revenue estimating conference under section 8.22A, subsection 3, the governor shall transmit recommendations for a balanced budget meeting this in conform-