

H.536

An act relating to the Adjutant and Inspector General and the Vermont National Guard

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 2 V.S.A. § 12 is amended to read:

§ 12. LEGISLATIVE ELECTIONS; UNIFORM BALLOTS

(a) Whenever there is a known contested election for ~~speaker of the house of representatives~~ Speaker of the House of Representatives, ~~president pro tempore of the senate~~ President Pro Tempore of the Senate, and in elections by the joint assembly of the ~~legislature~~ General Assembly, the ~~secretary of state~~ Secretary of State shall prepare a ballot for each office, listing the names of the known candidates for the office in the alphabetical order of their surnames, and leaving thereon sufficient blank spaces to take care of any nominations from the floor.

(b) A candidate for office, other than a candidate for Adjutant and Inspector General, shall, not later than one week preceding the election, notify the ~~secretary of state~~ Secretary of State in writing of his or her candidacy, naming the particular office. If he or she fails so to notify the ~~secretary of state~~ Secretary of State, his or her name shall not be printed on the ballot. No ballot may be used other than the official ballot provided by the ~~secretary of state~~ Secretary of State.

(c) A candidate for Adjutant and Inspector General shall:

(1) be a resident of Vermont;

(2) have served in the U.S. Armed Forces and attained at least the rank of Lieutenant Colonel;

(3) be a commissioned officer or a former commissioned officer of the Army, Air Force, Air National Guard, Army National Guard, Army Reserves, or Air Force Reserves;

(4) be a current member of the U.S. Armed Forces or be capable of being brought back to active service; and

(5) be a graduate of a Senior Service college (SSC) or be able to complete the course of study by the end of the first two-year term.

Sec. 2. 20 V.S.A. § 363 is amended to read:

§ 363. OFFICERS GENERALLY

The ~~general assembly~~ General Assembly shall biennially elect an ~~adjutant and inspector general~~ Adjutant and Inspector General, who shall also be ~~quartermaster general~~ Quartermaster General with the rank of a ~~major general~~ Major General. A candidate for Adjutant and Inspector General shall meet the requirements of 2 V.S.A. § 12(c). ~~Such officer~~ The Adjutant and Inspector General may appoint a deputy with appropriate rank, an ~~assistant adjutant general for army~~ Assistant Adjutant General for Army, an ~~assistant adjutant general for air~~ Assistant Adjutant General for Air, an ~~assistant adjutant general~~

~~for joint operations~~ Assistant Adjutant General for Joint Operations, a ~~sergeant major~~ Sergeant Major, and a ~~chief master sergeant~~ Chief Master Sergeant, without pay, with the approval of the ~~governor~~ Governor. The ~~adjutant general~~ Adjutant and Inspector General may remove the appointed ~~assistant adjutant generals~~ Assistant Adjutant Generals and ~~sergeants~~ Sergeants and shall be responsible for their acts. Upon appointment, each ~~assistant adjutant general~~ Assistant Adjutant General shall be a federally recognized officer of the ~~national guard~~ National Guard of the rank of ~~lieutenant colonel~~ Lieutenant Colonel or above, and shall have a rank of ~~colonel~~ Colonel or ~~brigadier general~~ Brigadier General, and the ~~sergeant major~~ Sergeant Major shall be a federally recognized noncommissioned officer of the ~~national guard~~ National Guard of the rank of ~~master sergeant~~ Master Sergeant or ~~first sergeant~~ First Sergeant, and the ~~chief master sergeant~~ Chief Master Sergeant shall be a federally recognized noncommissioned officer of the rank of ~~senior master sergeant~~ Senior Master Sergeant or ~~first sergeant~~ First Sergeant. The deputy, assistants, and sergeants shall perform duties as the ~~adjutant and inspector general and quartermaster general~~ Adjutant and Inspector General shall direct. In the absence or disability of the officer, the deputy shall perform the duties of that office. In case a vacancy occurs in the office of ~~adjutant and inspector general and quartermaster general~~ Adjutant and Inspector General, the deputy shall assume and discharge the duties of the office until the vacancy is filled. The

appointments shall be in writing and recorded in the ~~office of the secretary of state~~ Office of the Secretary of State. All other officers of the ~~national guard~~ National Guard shall be chosen in accordance with such regulations as the ~~governor~~ Governor may prescribe consistent with the laws of this ~~state~~ State and the United States.

Sec. 3. 20 V.S.A. § 370 is added to read:

§ 370. ADJUTANT AND INSPECTOR GENERAL REVIEW

BOARD

(a) A board is created to review nominees for Adjutant and Inspector General.

(b)(1) The Board shall consist of 10 members who shall be selected as follows:

(A) The Senate shall elect four of its members, not all of whom shall be members of the same party.

(B) The House shall elect four of its members, not all of whom shall be members of the same party.

(C) The Governor shall appoint two ex officio members who shall have served in the U.S. Armed Forces.

(2) The members of the Board appointed by the Governor shall serve for terms of two years and may serve for no more than three terms. The members of the Board elected by the House and Senate shall serve for terms of two years

and may serve for no more than three consecutive terms. All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. Members shall serve until their successors are elected or appointed.

(3) The members shall elect their own chair who will serve for a term of two years.

(c) Legislative members of the Board shall be entitled to per diem compensation and reimbursement for expenses in accordance with 2 V.S.A. § 406. Members of the Board who are not otherwise compensated by their employer shall be entitled to per diem compensation and reimbursement for expenses in the same manner as Board members are compensated under 32 V.S.A. § 1010.

(d) The Board shall adopt rules under 3 V.S.A. chapter 25 which shall establish criteria, standards, and timelines for the nomination and review of qualified candidates for Adjutant and Inspector General. The standards and criteria shall include command experience, security clearance, officer efficiency reports, integrity, health, and administrative and communicative skills. Any candidate that meets the requirements of 2 V.S.A. § 12(c) shall be included on the list of candidates submitted to the General Assembly pursuant to section 371 of this title.

(e) All proceedings of the Board, including the names of candidates considered by the Board and information about any candidate, shall remain confidential until the list of candidates is submitted to the General Assembly.

(f) A quorum of the Board shall consist of six voting members.

(g) The Board is authorized to use the staff and services of appropriate state agencies and departments as necessary to conduct investigations of applicants.

Sec. 4. 20 V.S.A. § 371 is added to read:

§ 371. DUTIES OF REVIEW BOARD

The Board shall biennially submit a report and a list of candidates for Adjutant and Inspector General to the General Assembly prior to the election of the Adjutant and Inspector General. The list shall constitute the complete list of all candidates for the General Assembly to vote on pursuant to 2 V.S.A. § 12.

Sec. 5. 20 V.S.A. § 427 is added to read:

§ 427. SEXUAL ASSAULT AND HARASSMENT; REPORT

(a) Notwithstanding 2 V.S.A. § 20(d), the Adjutant and Inspector General shall make a report to the General Assembly on January 15, 2014 and annually thereafter regarding complaints of sexual assault and harassment involving members of the Vermont National Guard.

(b) The report shall contain:

(1) the number of complaints made in the prior federal fiscal year of sexual assault or harassment and of discrimination based on sexual orientation committed by or against members of the Vermont National Guard while in military status or under the jurisdiction of the Vermont National Guard;

(2) the number of restricted reports of sexual assault, unrestricted reports of sexual assault, reports of sexual harassment, and of discrimination and a summary of the resolution of each case and the status of any action taken in each case;

(3) a summary of the current policies, procedures, and processes regarding the incidence of sexual assault, sexual harassment, or discrimination, and any changes made by the Guard since the prior report;

(4) all information provided to the Vermont National Guard by the Department of Defense regarding sexual assault, sexual harassment, and discrimination involving Vermont National Guard members when the Guard is federalized; and

(5) a report on the number of line of duty determinations initiated during the prior fiscal year arising from a claim of sexual assault, sexual harassment, or discrimination, and the number of individuals referred to outside agencies.

(c) The report shall not reveal the name of any individual.

Sec. 6. 20 V.S.A. § 946 is added to read:

§ 946. COMMANDING OFFICER NONJUDICIAL DISCIPLINE

(a) A commanding officer may impose discipline for minor military offenses without the intervention of a court-martial in accordance with any regulations issued under this chapter. A member subject to discipline shall not be entitled to a court-martial for a minor military offense that will not involve a restraint on liberty as a punishment. A member subject to discipline shall have the right to a hearing before a nonjudicial discipline panel.

(b) A commanding officer may impose upon enlisted members of the officer's command:

(1) an admonition;

(2) a reprimand;

(3) for members who are serving on full-time military orders in excess of 179 days, the forfeiture of up to seven days of pay and, for all others, up to four days of pay;

(4) a reduction to the next inferior pay grade, if the grade from which the member is demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction; or

(5) the imposition of extra duties for up to 14 days, which need not be consecutive.



(c) A commanding officer of the grade of major or above may impose upon enlisted members of the officer's command:

(1) any discipline authorized in subdivisions (b)(1) and (2) of this section;

(2) for members who are serving on full-time military orders in excess of 179 days, the forfeiture of not more than one-half of one month's pay per month for up to two months, and, for all others, up to 14 days of pay;

(3) a reduction to the lowest or any intermediate pay grade, if the grade from which the member is demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades; or

(4) for members who are serving on full-time military orders in excess of 179 days, the imposition of extra duties for up to 45 days which need not be consecutive, and, for all others, the imposition of extra duties for up to 14 days which need not be consecutive.

(d) Any commanding officer may impose upon officers and warrant officer members of the officer's command disciplines authorized under subdivisions (b)(1) and (2) of this section.

(e) The Adjutant and Inspector General may impose upon officers and warrant officers:

(1) any discipline authorized in subdivisions (b)(1) and (2) of this section; or

(2) for members who are serving on full-time military orders in excess of 179 days, the forfeiture of not more than one-half of one month's pay per month for up to two months, and, for all others, up to 14 days of pay.

(f) Whenever any of those imposed disciplines are to be served consecutively, the total length of the combined discipline cannot exceed the authorized duration of the longest discipline in the combination, and there must be an apportionment of disciplines so that no single discipline in the combination exceeds its authorized length.

(g) The officer who imposes the discipline or the successor in command may at any time suspend, set aside, mitigate, or remit any part or amount of the discipline and restore all rights, privileges, and property affected. The officer also may mitigate reduction in grade to forfeiture of pay.

(h) The mitigated discipline shall not be for a greater period than the original discipline mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the discipline.

(i) A person punished under this section may appeal to the next superior authority within 15 days after the discipline is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided, but the person punished may, in the meantime, be required to undergo the discipline adjudged. The superior authority may exercise the same powers with respect to the discipline imposed as may be exercised under subsection (g) of this section by the officer who imposed the discipline. Before acting on an appeal, the authority may refer the case to a judge advocate for consideration and advice.

(j) The imposition and enforcement of discipline under this section for any act or omission is not a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this section. The fact that a discipline has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of discipline to be adjudged in the event of a finding of guilty.

(k) Whenever a discipline of forfeiture of pay is imposed under this section, the forfeiture may apply to pay accruing before, on, or after the date that discipline is imposed.

(l)(1) An individual subject to discipline under this section may elect to have his or her case heard before a nonjudicial discipline panel. The

commanding officer shall notify the individual, verbally and in writing, of the following:

(A) the nature of the alleged wrongdoing;

(B) his or her intent to dispose of the matter by nonjudicial discipline; and

(C) other nonjudicial discipline procedural rights set forth by regulation.

(2) The individual shall have 24 hours to make an election for disposition by the panel.

(3) The panel shall consist of three members, appointed by the commander's next higher authority. The members of the panel shall be officers who are senior to the individual requesting the panel. If it is an enlisted member requesting the panel, there shall be at least one enlisted member on the panel but the member must be senior to the enlisted member requesting the panel. The individual requesting the panel may request that at least one member of the panel be of the same sex as the individual and the request shall be honored unless there is no qualified person of the same sex as the individual to serve on the panel. The senior member shall be the chair. The most junior member shall be the recorder and shall record summaries of the proceedings. However, if the nonjudicial discipline is being offered by a general officer, the panel shall consist of three members appointed by the

Adjutant and Inspector General with the most senior member being the chair and the most junior member being the recorder, who shall record the summaries of the proceedings.

(4) The panel decision shall be by majority vote. The panel has the same authority and responsibility in conducting the proceeding and disposing of the matter, including imposing nonjudicial discipline, as has a field grade officer pursuant to this section. The panel shall forward its recommendation for disposition and imposition of discipline, if any, to the appointing authority. The appointing authority shall approve the recommended discipline or any part or amount as the appointing authority sees fit and may suspend, mitigate, or remit as he or she deems appropriate. The appointing authority may not approve any discipline in excess of that approved by the panel.

(5) The procedural requirements for a nonjudicial hearing and its disposition by the panel shall be the same as would otherwise be applicable for disposition by the commanding officer, including the individual's right to counsel, to submit matters in extenuation, mitigation, or defense, and to call and examine witnesses, to the extent witnesses are reasonably available.

(6) Appeals from the decision of the appointing authority may be taken directly to the next higher authority to act upon appeal as set forth in this section with respect to nonjudicial discipline appeals generally, unless the

action is initiated by a general officer, in which case the Adjutant and Inspector General shall have the final decision.

Sec. 7. 31 V.S.A. § 1002 is amended to read:

§ 1002. GREEN MOUNTAIN PASSPORT; ELIGIBILITY

(a) Any person is eligible to obtain a Green Mountain Passport who:

(1) is:

(A) at least 62 years of age; or

(B) ~~totally disabled as the result of disease or injury suffered while serving in the armed forces; or~~

~~(C) a resident of the Vermont Veteran's Home in Bennington a~~  
veteran of the uniformed services; and

(2) is a resident of the state.

\* \* \*

Sec. 8. EFFECTIVE DATES AND TRANSITIONAL PROVISIONS

(a) This section and Sec. 5 shall take effect on passage. All remaining sections shall take effect on July 1, 2013.

(b) The initial appointment and election of members to the Adjutant and Inspector General Recommendation Board shall be made by February 1, 2014.