

CHAPTER 21

DEPARTMENT OF MILITARY AFFAIRS

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21.01 Composition of national guard. (1) The organized militia of this state shall be known as the "Wisconsin national guard" and shall consist of members appointed or enlisted therein in accordance with federal law or regulations governing or pertaining to the national guard.

(2) The Wisconsin national guard shall be organized into army national guard and air national guard units, and "national guard" when used in this chapter, unless the context otherwise requires, includes both the Wisconsin army national guard and the Wisconsin air national guard.

History: 1975 c. 189; 1983 a. 27.

21.015 Department duties. The department of military affairs shall:

(1) Administer the national guard.

(2) Provide facilities for the national guard and any other support available from the appropriations under s. 20.465.

History: 1983 a. 27.

21.025 State defense force authorized. (1) **AUTHORITY AND NAME.** The adjutant general may establish a plan for organizing a military force to be known as the Wisconsin state defense force. The adjutant general may organize the Wisconsin state defense force under the plan if all or part of the Wisconsin national guard is called into the service of the United States. It shall be distinct from the national guard, uniformed, and composed of officers, commissioned or assigned, and of enlisted personnel who volunteer for service. Membership in the Wisconsin state defense force may not include any person who is in the active military forces, including the reserve components. Persons in the retired reserve may serve in the Wisconsin state defense force.

(2) **ORGANIZATION; RULES AND REGULATIONS.** (a) The governor may prescribe rules and regulations not inconsistent with this section governing the enlistment, organization, administration, equipment, maintenance, training, and discipline of such forces, except that such rules and regulations, insofar as the governor deems practicable and desirable, shall conform to existing law governing and pertaining to the national guard and the rules and regulations promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities, or anything of value by such forces or by any member of such forces from any person by reason of such membership.

(b) The governor may form an aviation unit of the state defense force and formulate the rules and regulations therefor and prescribe the duties thereof consistent with the functions of the state defense force.

(c) Officers and enlistees, while on active duty under orders of the governor, shall receive the base pay and allowances of the identical grade in the United States army.

(d) The adjutant general may organize a cadre force of not more than 12 personnel at each state-owned armory. Each cadre force shall establish recruitment lists of persons interested in becoming members of the state defense force, which may be used to recruit full units for the state defense force in case the Wisconsin national guard is mobilized for active federal duty.

(3) **REQUISITIONS; ARMORIES; OTHER BUILDINGS.** For the use of such forces, the governor may requisition from the federal government such arms and equipment as may be available, and the governor may make available to the state defense force the facilities of state armories and their equipment and such other state premises and property as may be available and may, through the department of military affairs, rent or lease buildings or parts of buildings and grounds for armory purposes or continue in possession of such premises leased by the department of military affairs for the use of the national guard, paying rental therefor out of funds appropriated under s. 20.465 (1) (a). All leases so made shall terminate upon dissolution of the Wisconsin state defense force regardless of the term provided therein unless the premises shall be needed for national guard purposes, in which case the lease may be assigned by the department of military affairs to the national guard organization intending to occupy the premises.

(4) **USE WITHOUT THIS STATE.** Such forces shall not be required to serve outside the boundaries of this state except:

(a) Upon the request of the governor of another state, the governor of this state may order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state. Such forces may be recalled by the governor at the governor's discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit, or detach-

ment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, provided such other state shall have given authority by law for such pursuit by such forces of this state. Any such person who shall be apprehended or captured in such other state by an organization, unit, or detachment of the forces of this state shall without unnecessary delay be surrendered to the military or police forces of the state in which the person is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

(5) PERMISSION TO FORCES OF OTHER STATES. (a) Any military forces or organization, unit, or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and such military forces of such other state may arrest or capture such persons within this state while in fresh pursuit.

(b) Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law.

(c) This subsection shall not be construed to make unlawful any arrest in this state which would otherwise be lawful.

(6) FEDERAL SERVICE. Nothing in this section shall be construed as authorizing such forces, or any part thereof to be called, ordered, or in any manner drafted, as such into the military service of the United States, but no person shall by reason of enlistment or commission in any such forces be exempted from military service under any law of the United States.

(7) CIVIL GROUPS. No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

(8) DISQUALIFICATIONS. No person shall be commissioned or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any military or naval organization, of this state, or of another state, or of the United States.

(9) OATH OF OFFICERS. The oath to be taken by officers commissioned in such forces shall be substantially in the form prescribed for officers of the national guard.

(10) ENLISTEES. No person shall be enlisted for more than one year, but such enlistment may be renewed. The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed for enlistees of the national guard.

(11m) RETENTION OF ITEMS OF UNIFORM. (a) Officers and enlistees of the "Wisconsin State Defense Force" who have served honorably therein for a period of at least one year and are active members of their respective units at the time of its demobilization shall, upon application to the unit commander, be permitted to retain the items of uniform prescribed by the governor by rule.

(b) The uniform prescribed under par. (a) may be worn only on occasions of ceremony. "Occasions of ceremony" means occasions essentially of a military character at which the uniform is more appropriate than civilian clothing, such as memorial services, military weddings, military funerals, military balls, military parades, and meetings or functions of associations formed for military purposes, the membership of which is composed largely or entirely of honorably discharged veterans of the services.

(11n) LABOR DISPUTES. The state defense force shall not be used to interfere with the orderly process of a labor dispute.

(13) SHORT TITLE. This section may be cited as the "State Defense Force Act".

History: 1975 c. 94 ss. 6, 91 (1); 1983 a. 27; 1987 a. 63 ss. 3, 13; 1991 a. 316.

21.03 Distribution of arms. The governor may receive and distribute, according to law, the quota of arms and military equipment which the state may receive from the government of the United States under the provisions of any acts of congress providing for arming and equipping the national guard and the state defense force.

History: 1987 a. 63 s. 13.

Federal law prevents the state from regulating personnel criteria of the national guard. *Hazelton v. Personnel Commission*, 178 W (2d) 776, 505 NW (2d) 793 (Ct. App. 1993).

21.04 Camp Williams. (1) The state camp grounds near Camp Douglas, Juneau county, shall be known as "Camp Williams". The officer in charge of Camp Williams shall have at said camp the police powers possessed by officials at state hospitals, as provided in s. 46.058 (2).

(2) The adjutant general may grant to the federal government the right to use any area of Camp Williams upon such conditions as the adjutant general deems advisable.

(3) In memory of 1st lieutenant Jerome A. Volk, the first Wisconsin air national guard pilot killed in combat during the Korean conflict, so much of Camp Williams as is under lease to the federal government for use of the air national guard shall be known as "Volk Field" during the time the property remains under lease to the government of the United States.

History: 1979 c. 221 s. 2202 (37); 1991 a. 316.

21.05 Term of enlistment; requirements. Every person who enlists or receives a commission in the national guard shall serve for the term prescribed and satisfy the physical, educational and training requirements prescribed by the national guard bureau.

21.06 Exemptions from certain county duties. Every member of the state military forces shall be exempt from service on any body of county residents summoned by the sheriff to assist in preserving the peace.

History: 1977 c. 318; 1979 c. 110.

21.07 Decorations and awards. The adjutant general may prescribe decorations and awards for the Wisconsin national guard and the state defense force, the form and issue thereof made under rules adopted by the adjutant general and approved by the governor.

History: 1975 c. 189; 1981 c. 207; 1983 a. 27; 1987 a. 63 s. 13.

21.09 Training; special schools; pay and allowances. The governor may order the national guard to assemble for training at any military establishment within or without the state specified and approved by the department of defense and fix the dates and places thereof, and the governor may order members of the national guard, at their option, to attend such special schools for military training as may be authorized by the state or federal government. For such training and attendance at special schools, members of the national guard shall receive such pay and allowances as the federal government or the governor may authorize.

History: 1991 a. 316.

21.11 Call to active service. (1) In case of war, insurrection, rebellion, riot, invasion, resistance to the execution of the laws of this state, or of the United States, or in the event of public disaster resulting from flood, conflagration or tornado, or upon application of any marshal of the United States, the president of any village, the mayor of any city, the chairperson of any town board, or any sheriff in this state, the governor may order into active service all or any portion of the national guard. If the governor is absent, or cannot be immediately communicated with, any such civil officer may, if the officer deems the occasion so urgent, make such application, which shall be in writing, to the commanding officers of any company, battalion or regiment, who may upon approval of the adjutant general, if the danger is great and imminent, order out that officer's command to the aid of such civil officer. Such order shall be delivered to the commanding officer, who

shall immediately communicate the order to each, and every subordinate officer, and every company commander receiving the same shall immediately communicate the substance thereof to each member of the company, or if any such member cannot be found, a notice in writing containing the substance of such order shall be left at the last and usual place of residence of such member with some person of suitable age and discretion, to whom its contents shall be explained.

(2) Any commissioned officer or enlisted member of the national guard who fails to carry out orders or fails to appear at the time or place ordered as provided in sub. (1) shall be punished under the Wisconsin code of military justice. Any person who advises or endeavors to persuade an officer or soldier to refuse or neglect to appear at such place or obey such order shall forfeit not less than \$200 nor more than \$1,000.

History: 1979 c. 221; 1991 a. 316; 1993 a. 246.

21.12 Exemption from civil authority. During the time the state military forces are performing military duty pursuant to proper orders issued by the governor or by the governor's authority, all members thereof while going to, remaining at or returning from a place of duty shall be exempt from arrest or service of any process issued by a civilian court. In any civil or criminal prosecution against any member arising out of the member's performing military duty, it shall be a defense that the member was acting in good faith or pursuant to any lawful military order. Any such order shall be deemed prima facie lawful.

History: 1991 a. 316.

Since this state has never granted a guardsman immunity from suit of another guardsman for injuries negligently caused in performance of his military duty, the 1969 amendment of this section does not change the law. *Mazurek v. Skaar*, 60 W (2d) 420, 210 NW (2d) 691.

21.13 Defense of members of guard; payment of judgments. (1) If any member of the national guard or the state defense force is prosecuted by any civil or criminal action for any act performed by the member while in the performance of military duty and in pursuance of military duty, the action against the member shall be defended by counsel, which may include the attorney general, appointed for that purpose by the governor upon the recommendation of the adjutant general. The adjutant general shall make the recommendation if the act performed by the member was in the line of duty. The costs and expenses of any such defense shall be audited by the department of administration and paid out of the state treasury and charged to the appropriation under s. 20.455 (1) (b) and if the jury or court finds that the member of the national guard against whom the action is brought acted within the scope of his or her employment as a member, the judgment as to damages entered against the member shall also be paid by the state.

(2) Any civil action or proceeding brought against a member of the national guard or the state defense force under sub. (1) is subject to ss. 893.82 and 895.46.

History: 1977 c. 65; 1979 c. 34 s. 2102 (37) (a); 1979 c. 221; 1981 c. 20 s. 2202 (17) (a); 1985 a. 332 s. 253; 1987 a. 63 s. 13.

A national guardsman on active duty, but operating his own car for his own purposes while on a pass, is not acting in the performance of a military duty. *Wuorinen v. State Farm Mut. Auto. Ins. Co.* 56 W (2d) 44, 201 NW (2d) 521.

This section controls over 102.03 (4) and the state must pay a judgment based on negligence occurring in the good faith performance of duty. *Mazurek v. Skaar*, 60 W (2d) 420, 210 NW (2d) 691.

21.15 Penalty for retention of military property. No person may retain at any time any arms, equipment or military stores of any kind belonging to the state or any federally owned property issued to the state, unless the property has been issued to the person pursuant to law and the proper authority permits the person to retain the property in the discharge of a public duty. No person may use any public arms, equipment, clothing or military stores belonging to the state, either as owner or bailee, for the person's private use. Any person violating this section shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

21.155 Nondelivery of arms; resisting officer. No person who possesses under the laws of this state any arms, equipment or other military property may wilfully neglect or refuse, after lawful demand is made for the return of the property by order of the governor, to return the property promptly. No person may knowingly resist any officer who is lawfully taking possession of such arms, equipment or other military property. Any person violating this section shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

21.16 Penalty for unauthorized wearing of uniforms. (1) No person may wear the uniform of the Wisconsin national guard or of the U.S. army, air force, navy or marine corps, or a reserve component of the U.S. armed forces, except a person who is regularly enrolled in the U.S. army, air force, navy or marine corps, a reserve component of the U.S. armed forces, the national guard of one of the states or one of the student cadet companies armed and recognized by the national or a state government, a person retired from active service or a reserve component or a person who is an inmate of any veterans' or soldiers' home. Any person violating this subsection shall forfeit not less than \$100 nor more than \$100. The district attorney of the county in which any such offense is committed shall bring an action in the name of the state against the offender.

(2) Nothing in this section shall be construed as prohibiting persons of the theatrical profession from wearing such uniform in any playhouse or theater while actually engaged in following said profession.

(3) Nothing in this section shall be construed as prohibiting the members of any uniform rank of civic societies from the wearing of such uniforms.

(4) Whenever the national guard, or any part thereof, is called into active service on account of war, insurrection, rebellion, riot, invasion, resistance to the execution of the laws of this state, or of the United States, or on account of public disaster, no civic organization or member thereof shall parade or appear in uniform in the locality where said national guard is in service.

History: 1979 c. 221; 1983 a. 27.

21.17 Encroachment on military areas and interference with military personnel. (1) The officer in charge of any area used or to be used for military purposes may cause the area to be marked in such a manner so as to warn against encroachment by unauthorized persons, but not to unnecessarily obstruct travel on any public highway. No person may encroach or enter upon the area without the consent of the officer.

(2) No person may intercept, molest, abuse or otherwise interfere with any member of the national guard or any other military force organized under the laws of this state while the member is in the performance of military duty.

(3) Any person who violates sub. (1) or (2) shall forfeit not less than \$50 nor more than \$200. The officer in charge or a designee may arrest and detain the person for such reasonable time as may be necessary to deliver the person to civil authorities.

History: 1975 c. 94 s. 91 (1); 1975 c. 189, 199, 422; 1979 c. 221.

21.18 Military staff of governor. (1) The military staff of the governor shall consist of the adjutant general, with a minimum rank of brigadier general; a deputy adjutant general for army, who may be a general officer; an assistant adjutant general, army, for readiness and training, who may be a general officer; a deputy assistant adjutant general, army, for readiness and training; a deputy adjutant general for air, who may be a general officer; a chief surgeon for army, who may be a general officer; a chief surgeon for air, who may be a general officer; a staff judge advocate for army, who may be a general officer; a staff judge advocate for air, who may be a general officer; a state chaplain, who may be a general officer; and such other officers as the governor deems necessary. Vacancies in positions other than those of the adjutant general shall be filled through appointment by the adjutant general.

(2) No person shall be appointed on the governor's staff who has not had previous military experience.

(3) All staff officers appointed under sub. (1), except the adjutant general whose tenure is governed by ss. 15.31 and 17.07 (5), shall hold their positions unless terminated earlier by resignation, disability or for cause and unless federal recognition of the officer's commission under 32 USC 323 is refused or withdrawn. The governor shall remove an officer whose federal recognition is refused or withdrawn, effective on the date of the loss of federal recognition. The terms of the deputy adjutants general for army and air shall be 5 years beginning on the first day of the 7th month of the term of the adjutant general. The deputy adjutants general may be reappointed to successive terms. Vacancies on the military staff of the governor shall be filled by appointment from officers actively serving in the Wisconsin national guard. Interim vacancies shall be filled by appointment by the adjutant general for the residue of the unexpired term.

History: 1981 c. 35; 1983 a. 391; 1987 a. 63.

21.19 Adjutant general; powers and duties. (1) The adjutant general shall be chief of staff to the governor. The adjutant general shall have the custody of all property, military records, correspondence and other documents relating to the national guard and any other military forces organized under the laws of this state. The adjutant general may appoint an assistant quartermaster general to issue and account for state property. The adjutant general shall be the medium of military correspondence with the governor and perform all other duties pertaining to the office or prescribed by law, including the preparation and submission to the governor of reports under s. 15.04 (1) (d).

(1m) The adjutant general shall administer, with the approval of the governor, state-federal cooperative funding agreements.

(2) The department of military affairs on behalf of the state may rent to appropriate organizations or individuals state-owned lands, buildings and facilities used by, acquired for, or erected for the Wisconsin national guard when not required for use by the Wisconsin national guard. Such rental shall not be effective unless in writing and approved by the governor and the adjutant general or a designee in writing.

(3) The department of military affairs on behalf of the state, upon appraisal by the state chief engineer submitted to the governor in writing, may sell and convey upon such terms as the department of military affairs may determine, with the approval of the governor in writing, any state-owned property acquired or erected for state military purposes, which property is no longer useful to the national guard.

(4) The adjutant general shall be the auditor of military accounts, and all accounts or claims payable from the treasury of the state for military purposes shall be regularly audited by the adjutant general before payment. The adjutant general shall cause to be prepared and issued all necessary books, blank books, blanks and forms required by the adjutant general's office for the national guard. All said books, blank books, blanks and forms shall be made to conform as nearly as practicable to those in use in the United States army.

(5) In the absence or incapacity of the adjutant general the senior ranking deputy adjutant general for army or air shall have all the powers and duties of the adjutant general.

(6) The adjutant general as quartermaster general shall also be chief of all logistical services.

(7) (a) The adjutant general as quartermaster general shall:

1. Have charge of all the military property of the state and shall carefully preserve, repair and account for the property.

2. Keep in such manner as the governor directs, and subject to the governor's inspection, an account of all moneys received and expended.

3. Perform the customary duties of the office, and of the office of chief of all logistical services, and have the custody of all records, returns and papers pertaining to those offices.

(b) The transportation of all troops, arms, accoutrements, stores and other property and the preparation for encampments shall be contracted for by the adjutant general under direction of the governor.

(8) The adjutant general or a designee shall issue all necessary supplies to members and units of the national guard and may contract for the purchase and transportation of such supplies, subject to s. 16.71 (1).

(9) When any military property belonging to the state as owner or bailee is wrongfully held by another person, the adjutant general may bring an action in the name of the state to recover possession of the same or the money value thereof.

(10) The adjutant general may, upon receipt of meritorious requests for state service flags for public use and within the limits of the appropriation made under s. 20.465 (1) (e), furnish such flags without charge to the persons or organizations requesting them.

(11) The adjutant general shall provide such medical supplies and services as are necessary to the national guard during periods of state active duty not otherwise provided under this chapter and ch. 102, to be charged to the appropriation under s. 20.465 (1) (c).

(12) The adjutant general shall provide from the appropriation under s. 20.465 (1) (c) a United States flag to the next of kin of each deceased member of the national guards who dies as a result of state service under s. 21.11.

History: 1975 c. 189, 421; 1977 c. 196 s. 131; 1977 c. 273; 1981 c. 35; 1983 a. 27; 1983 a. 333 s. 6; 1983 a. 524; 1991 a. 316; 1993 a. 184.

21.20 Civil service status. All full-time state-paid employees of the department of military affairs shall be under the classified service, except the adjutant general, the executive assistant to the adjutant general, the deputy adjutants general for army and air and the administrator of the division of emergency government.

History: 1971 c. 164; 1979 c. 221; 1981 c. 35; 1989 a. 31.

21.21 Printing report of convention of officers. Upon the request of the adjutant general and upon the order of the department of administration the state printer shall print and deliver to the adjutant general not to exceed 1,000 copies of the report of the annual convention of the officers of the national guard which the adjutant general shall distribute; but such report shall not exceed 150 pages.

History: 1991 a. 316.

21.28 United States property and fiscal officer. (1) The adjutant general shall recommend a candidate for appointment as the United States property and fiscal officer for the Wisconsin national guard, subject to the concurrence of the governor, from federally commissioned officers actively serving in the Wisconsin national guard. The candidate shall be nominated by the governor, subject to the concurrence of the U.S. secretary of the army, if the nominee is serving in the army national guard, or the U.S. secretary of the air force, if the nominee is serving in the air national guard.

(2) The officer nominated under sub. (1) shall assume the duties of a United States property and fiscal officer under 32 USC 708, when properly ordered to active duty by the appropriate U.S. secretary, on the date specified in the order. The officer shall hold his or her position unless terminated earlier by resignation, disability or for cause and unless federal recognition of the officer's commission under 32 USC 323 is refused or withdrawn.

(3) Any action by the governor to remove the officer appointed under sub. (1) for cause shall be governed by the federal laws and military regulations governing removal of an officer for cause and shall be subject to review by the chief of the national guard bureau and by the U.S. secretary of the army, if the officer is commissioned by the army national guard, or by the U.S. secretary of the air force, if the officer is commissioned by the air national guard.

History: 1987 a. 63.

21.30 Chief surgeons; powers and duties. The chief surgeons for army and air shall, under direction of the adjutant general, have general supervision of the medical units of the Wisconsin national guard and state defense force when organized. The chief surgeons shall make recommendations concerning procurement of medical supplies for state active duty operations, for the procurement and training of medical personnel and for the publication of Wisconsin national guard directives on medical subjects. The chief surgeons shall submit an annual report of the affairs and expenses of their departments to the adjutant general.

History: 1975 c. 189, 421; 1981 c. 35; 1987 a. 63 s. 13.

21.32 Physical examinations. The chief surgeons for army and air shall provide for such physical examinations and inoculations of officers, enlistees and applicants for enlistment, Wisconsin national guard, as may be prescribed by department of defense and national guard regulations.

History: 1975 c. 94 s. 91 (1); 1975 c. 189, 422; 1981 c. 35.

21.33 Pay department. The quartermaster general acting as paymaster under orders from the governor may draw from the state treasury the money necessary for paying troops in camp or on active service, and shall furnish such security for the same as the state treasurer may direct. The amount due on account of the field, staff or other officers, noncommissioned staff and band, company or enlistees, not herein enumerated, if any, shall be paid to the person to whom the same shall be due, on the properly signed and certified payrolls.

History: 1975 c. 94 s. 91 (1).

21.35 Federal laws and regulations; no discrimination. The organization, armament, equipment and discipline of the Wisconsin national guard shall be that prescribed by federal laws or regulations; and the governor may by order perfect such organization, armament, equipment and discipline, at any time, so as to comply with such laws and regulations insofar as they are consistent with the Wisconsin code of military justice. Notwithstanding any rule or regulation prescribed by the federal government or any officer or department thereof, no person, otherwise qualified, may be denied membership in the Wisconsin national guard because of sex, color, race, creed or sexual orientation and no member of the Wisconsin national guard may be segregated within the Wisconsin national guard on the basis of sex, color, race, creed or sexual orientation. Nothing in this section prohibits separate facilities for persons of different sexes with regard to dormitory accommodations, public toilets, showers, saunas and dressing rooms.

History: 1975 c. 94; 1981 c. 112.

21.36 National guard rules and regulations. (1) The rules of discipline and the regulations of the armed forces of the U.S. shall, so far as the same are applicable, constitute the rules of discipline and the regulations of the national guard; the rules and uniform code of military justice established by congress and the department of defense for the armed forces shall be adopted so far as they are applicable and consistent with the Wisconsin code of military justice for the government of the national guard, and the system of instruction and the drill regulations prescribed for the different arms and corps of the armed forces of the U.S. shall be followed in the military instruction and practice of the national guard, and the use of any other system is forbidden.

(2) The governor may make and publish rules, regulations and orders for the government of the national guard, not inconsistent with the law, and cause the same, together with any laws relating thereto, to be printed and distributed in book form or otherwise in such numbers as the governor deems necessary, and the governor may provide for all books, blank books, and blanks that may be necessary for the proper discharge of the duty of all officers. The governor may delegate the authority under this subsection to the adjutant general by executive order.

History: 1979 c. 221; 1983 a. 192; 1991 a. 269, 316.

21.37 The Wisconsin code of military justice. The Wisconsin code of military justice as created by chapter 20, laws of 1969, shall govern the conduct of all members of the national guard and any other military force organized under the laws of this state. The revisor of statutes shall not print the Wisconsin code of military justice in the statutes.

Limitation of court martial to service connected crimes. 1970 WLR 172.

21.38 Uniform of Wisconsin national guard. The uniform of the national guard shall be that prescribed by regulations for the corresponding branch of the United States armed forces.

21.42 Status, powers and property of units.

(1) Every federally recognized company sized unit, when such organization is perfected, shall without any further proceeding constitute a corporate body to be known by the name by which such company is officially designated under the military laws and regulations of the state, and shall possess all the powers necessary and convenient to accomplish the objects and perform the duties prescribed by law.

(2) The members of such company sized unit in good standing and no others shall constitute the members of such corporation and shall elect 3 trustees who shall manage and administer the business of such corporation. The trustees shall elect one of their number president, and one vice president and shall also elect a secretary.

(3) Each such company sized unit may take by purchase, devise, gift or otherwise and hold property and with the approval of the adjutant general sell, convey and mortgage such property so long as such company sized unit is an existing unit and a part of the national guard of Wisconsin. All such property shall be in the custody and control of the trustees.

(4) Whenever any such company sized unit shall be disbanded as provided by law such corporation shall cease to exist and all property belonging to it shall become the property of the state.

21.43 Commissions and rank. The governor shall issue commissions to all officers whose appointments are approved by the governor. Every commission shall be countersigned by the secretary of state and attested by the adjutant general and continue as provided by law. Each officer so commissioned shall take and file with the department of military affairs the oath of office prescribed by article IV, section 28, of the constitution. All commissioned officers shall take rank according to the date assigned them by their commissions, and when 2 of the same grade rank from the same date, their rank shall be determined by length of service in the national guard creditable for pay, and if of equal service then by lot.

History: 1983 a. 27, 192.

21.47 Examinations for promotion or appointments. The governor may order any subordinate officer or person nominated or recommended for promotion or appointment in the national guard to be examined by any competent officer or board of officers, designated in orders for that purpose, as to that person's qualifications for the office to which that person may be recommended or appointed, and may take such action on the report of such examining officer or board of officers as the governor deems to be for the best interests of the service. The governor may also require the physical examination provided for admission to the United States army or air force.

History: 1983 a. 27; 1991 a. 316.

21.48 Pay. (1) Each officer and enlisted person of the Wisconsin national guard on active duty in the state under orders of the governor on a state pay basis shall receive the base pay and allowances of an officer or enlisted person of equal rank in the corresponding branch of the U.S. armed forces except that the base pay so provided shall not be less than \$50 per day.

(2) The governor may, by orders, duplicates of which shall be filed with the secretary of state, fix the pay of any member of the

governor's staff, or other members of the national guard for any special service under orders.

(3) The governor may order, with their consent, to active duty in the department of military affairs, any departmental officers of the governor's staff, including the adjutant general and the deputy adjutants general, and while so assigned the officers shall receive the pay, but not the allowances, of an officer of equal grade in the armed forces of the United States.

History: 1973 c. 279; 1975 c. 94 s. 91 (1); 1975 c. 382, 422; 1981 c. 35, 129; 1991 a. 316.

21.49 Educational benefits. (1) **DEFINITIONS.** In this section:

(ae) "Department" means the department of military affairs.

(am) "Full-time study" means a credit load of 12 or more academic credits in an academic term.

(ar) "Guard member" means any person who is a member of the Wisconsin national guard.

(b) "Qualifying school" means any of the following:

1. The extension division and any center or campus of the university of Wisconsin system.

2. Any accredited institution of higher education as defined by rule by the higher educational aids board.

3. Any technical college established under ch. 38.

(c) "Tuition grant" means any tuition cost reimbursement payment made by the department under sub. (3).

(2) **ELIGIBLE GUARD MEMBER.** Eligibility for a tuition grant under this section is limited to a guard member who is not:

(d) Failing to meet the national guard service eligibility criteria established by the department by rule.

(e) Delinquent in child support or maintenance payments, as established by the receipt by the department of a certification under s. 46.255 (7).

(3) **TUITION GRANTS.** (a) Any eligible guard member upon satisfactory completion of a full-time or part-time course in a qualifying school is eligible for a tuition grant equal to 50% of the actual tuition charged by the school or 50% of the maximum resident undergraduate tuition charged by the university of Wisconsin-Madison for a comparable number of credits, whichever amount is less.

(b) Application for tuition grants shall:

1. Be submitted to the department for approval of payment no later than 6 months after the completion date of the course;

2. Contain such information and be in such form as the department requires to establish that the applicant qualifies for the grant; and

3. Contain the signatures of both the guard member claiming the grant and a representative of the school, certifying that the member has satisfactorily completed the course.

(c) Except as provided under par. (d), upon determination that the applicant is eligible to receive the payment, the department shall make payment of the tuition grant to the applicant in the amount determined under par. (a).

(d) Tuition grants under this section shall be paid out of the appropriation under s. 20.465 (2) (a). If the amount of funds applied for exceeds the amount available under s. 20.465 (2) (a), the department shall not prorate grants but may deny grants. In such cases, the department shall determine eligibility on the basis of the dates on which applications for tuition grants are received.

(3m) **REPAYMENT OF GRANTS.** The department may require a guard member who has received a grant under this section to repay the amount of the grant to the department if the national guard member, within 12 months of receipt of the grant, fails to meet any of the national guard service eligibility criteria established by the department by rule.

(4) **LIMITATIONS.** (a) No guard member is eligible for benefits under this section for more than 120 credits of part-time study or 8 full semesters of full-time study or the equivalent thereof.

(b) If the U.S. congress establishes an active draft after July 1, 1977, no new grants may be authorized under this section. The department shall determine if an active draft has been established. Any termination of the grant program under this paragraph shall allow persons receiving grants prior to the establishment of an active draft to receive full benefits subject to sub. (3) (d) and par. (a).

History: 1977 c. 29, 418; 1981 c. 20; 1985 a. 29; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 269; 1993 a. 399.

21.50 Military property accountability. (1) Each commanding officer to whom state or federal military property is issued may be required to execute to the state a bond, with such sureties and in such form and amount as the adjutant general shall approve, conditioned for the faithful preservation and care of all such arms, accoutrements, moneys, or stores, that the officer received, to indemnify the state against loss by misuse or misapplication by the officer or any other person; to account for all of the same according to law, and to deliver the same to any officer lawfully entitled thereto, on demand, and to pay all sums lawfully appraised for losses or damages.

(2) The unit commander is the legal custodian of the money, property and effects of any company sized unit or detachment of the national guard, whether said property is owned by said unit or detachment or its members collectively, or has been issued to it or any of its officers, for its use by state or United States authority, and may sue for and recover possession of the same, whenever wrongfully withheld from the unit commander's custody or the custody of the unit or detachment.

(3) The adjutant general, with the approval of the governor may obtain and pay for out of the annual military appropriation an adequate indemnity bond covering all of the officers of the Wisconsin national guard responsible to the state for moneys and military property.

(4) Each company commander, with the approval of the adjutant general, may employ an armorer to assist in the proper care of military property for which the company commander is accountable.

History: 1975 c. 189, 421; 1991 a. 316.

21.51 Discharge of officers. Any officer may be discharged by the governor pursuant to the Wisconsin code of military justice or upon resignation or disability preventing full discharge of the duties of his or her office.

History: 1991 a. 316.

21.52 Authority to administer oaths. Any officer of the national guard or any officer of the U.S. armed forces may administer oaths of enlistment.

History: 1979 c. 221.

21.54 Resignation of officer. A commissioned officer may resign the officer's commission to the officer's immediate commanding officer, in writing, who shall promptly forward the same through military channels to the adjutant general. The governor shall, by order, accept or reject the same, and, if accepted, fix the date of its taking effect. No resignation shall take effect except as so ordered.

History: 1991 a. 316.

21.56 Lost and obsolete property. (1) All state-owned military property issued to any officer or armory facility manager shall be audited annually as a part of the annual inspection of federal property accounts. When damages other than fair wear and tear or loss of state-owned property is discovered, the adjutant general shall appoint a surveying officer to determine the cause and fix blame. Upon review, the adjutant general may hold responsible individuals pecuniarily liable, and may require a depreciated payment, as determined by the adjutant general, into the state treasury. If it is determined that the property was damaged, destroyed or lost without fault or neglect on the part of those responsible, all concerned may be relieved of liability.

(2) Whenever any state-owned military property becomes unsuitable, unserviceable or no longer required for military purposes, it shall be disposed of as surplus property subject to s. 16.72 (4) and (5).

History: 1971 c. 100 s. 23; 1975 c. 189; 1989 a. 31.

21.57 Disposition of property on separation and death. (1) Whenever any officer who is responsible for state property is separated or reassigned, all property in the officer's possession or for which the officer is responsible shall be delivered to the person designated to receive the property by the adjutant general. No separation shall be effective until all property accounts have been settled.

(2) In case of the death of any officer having custody of state property, the next in command shall immediately take charge of such property and deliver the same to the person appointed to receive the property by the adjutant general.

History: 1975 c. 189, 421.

21.59 Issue of subsistence. The adjutant general, during state active duty of the national guard or state defense force, shall issue subsistence to personnel.

History: 1975 c. 94 s. 91 (1); 1975 c. 189; 1987 a. 63 s. 13.

21.60 Discharge of enlistees. Enlistees shall be discharged as provided in the laws and regulations of the United States governing the national guard.

History: 1975 c. 94 s. 91 (1).

21.61 Armories. (1) The governing body of any city, village, town or county in which one or more companies of the national guard may be located may erect or purchase a suitable armory for the purpose of drill and for the safekeeping of the arms, equipment, uniforms and other military property furnished by the state, and for public meetings and conventions, when such use will not interfere with the use of such building by the national guard. Plans and specifications for such armories shall be inspected and approved by the governor and the adjutant general who shall file with the governing body of the city, village, town or county a certificate of such inspection and approval prior to the erection thereof.

(3) The governing body of any city, village, town or county in which any such company of the national guard may be located may purchase land and build armories in the same manner as the governing body is now authorized by law to build other city, village, town or county buildings, and when unable to agree upon the price of land with its owner may, if in its opinion necessary, appropriate land for the purpose of building armories in the same manner as the governing body is now authorized by law to appropriate real estate for other city, village, town or county buildings. In case however a city, village, town or county shall have aided in the erection of an armory and the company or companies of the national guard for which the armory was erected shall at any time be disbanded, then the armory shall become the property of the city, village, town or county in which the armory is erected.

(4) Such armory, when erected or purchased, shall be under the control and charge of the governor, the adjutant general and commanding officer of the company or companies of the national guard for which it has been provided. The commanding officer shall cause to be deposited therein, all arms, uniforms and equipment received from the governor and the adjutant general who may make such rules as they deem proper for the observance of all officers and persons having charge of such armories or occupying any part thereof.

(5) Whenever any county, city, town or village erects a building as a memorial to the soldiers, sailors and marines who served in any war or armed conflict of the United States and makes provision therein for the accommodation of one or more companies of the national guard having no regularly established armory, the governor, adjutant general or other state officers having control of

armory accommodations and regulations shall, whenever practicable, rent the armory provided in such memorial building for the use of companies of the national guard.

History: 1975 c. 189; 1983 a. 27; 1993 a. 246.

21.612 Transfer of lands for military purposes. Any county, city, town or village may transfer land or may acquire land for the purpose of transferring the same, by gift or otherwise, to the state for state military purposes, and any such transfers or acquisitions heretofore made for such purposes are validated.

History: 1973 c. 90.

21.616 Facilities for administration and training. The department of military affairs is authorized and directed, when contributions therefor are made available by the federal government under the national defense facilities act of 1950 or any act or acts amendatory thereof or supplementary thereto, to expand, rehabilitate, equip or convert facilities owned by the state and to acquire, construct, expand, rehabilitate, equip or convert additional facilities. The department of military affairs may on the part of the state accept such federal contributions in the manner prescribed by federal law or regulation, and may accept on behalf of the state the lawful terms and conditions thereof. The department of military affairs shall take such steps and have all the functions and powers necessary, consistent with the appropriation therefor, to acquire contributions under any such federal act and to undertake and complete any such project in conformity with the applicable federal act and this section.

21.62 Rules for issuance of state property to bands. The governor may, by orders, prescribe and establish such rules and regulations for the issuing of state property to bands and the giving of security therefor, the mustering, inspection, property and other returns, as the governor deems proper.

History: 1991 a. 316.

21.63 Grounds for mustering out of units. If any company sized unit or detachment falls below the minimum in membership, becomes insubordinate, lax in discipline or negligent in drill or other duties, if its members lose interest in their organization, if, upon inspection, it appears that the unit or detachment is not properly organized or conducted, or if the unit or detachment does not make musters and returns, the governor may muster out the unit or detachment and may direct all persons holding arms, equipment and military stores to return the property. Any person, not a member of the national guard in good standing, who retains arms or other property belonging to the state, as owner or bailee, after the governor directs the return of the property, shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

21.70 Counter-drug activities. (1) The governor may request volunteers of the national guard to provide assistance to federal, state and local law enforcement officers, within or outside the boundaries of this state, in drug interdiction and counter-drug activities under 32 USC 112. These activities may include the operation and maintenance of equipment and facilities. The governor may order, with their consent, any national guard members who volunteer under this section to duty in federally funded status. The governor may delegate his or her authority under this section to the adjutant general. The adjutant general shall follow all laws and regulations of the U.S. department of defense when ordering national guard members to perform drug interdiction and counter-drug activities under this section.

(2) A national guard member assisting in drug interdiction and counter-drug activities under this section shall obey and execute the instructions of a law enforcement officer involved in these activities given to the national guard member through the military chain of command.

History: 1991 a. 47.