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Department of Military and

The Honorable Chris Tuck
Alaska House of Representatives
Room 204 Alaska State Capitol
Juneau, AK 99801

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Dear Representative Tuck:

Thank you for introducing House Bill 152, "An Act relating to the organized militia; and relating to the authority of the adjutant general." Despite its unassuming title, HB 152 is an important step forward in our continuing efforts to modernize operations of Alaska's organized militia. HB 152 helps ensure the organized militia's four components – the Alaska Army National Guard (AKARNG), Alaska Air National Guard (AKANG), Alaska State Defense Force (ASDF), and Alaska Naval Militia – collectively constitute an efficient military force able to respond quickly to the needs of Alaska's citizens.

Broadly speaking, HB 152 updates the original 1955 Alaska Military Code (AMC) by clarifying statutory authorities. Specifically, the bill grants military command authority to The Adjutant General (TAG), who already possesses statutory control of the organized militia. Military command authority carries two broad functions: 1) legal authority over personnel, including the power to discipline; and 2) legal responsibility for missions and resources. The old AMC is unclear regarding this kind of authority and concomitant responsibility. For example, it may seem logical, but it is not explicitly set in statute TAG: 1) has control, but not command of the AKARNG and AKANG; 2) may promulgate regulations for the AKARNG and AKANG; and 3) may order State Active Duty personnel to work in the Office of the TAG.

Command and control are important functions in any military organization. Commanders set and are responsible for the organization's priorities, goals, and missions, while people in control direct their subordinates to carry out those missions. A commander is in command of a unit and its subordinate units, e.g., the Governor commands the AKARNG and AKANG, their brigades and wings, the battalions and squadrons, etc. There exists a chain of command, i.e., each commander of a subordinate unit commands his/her unit and is therefore responsible for and makes final decisions on matters that pertain to the that unit. A commander is responsible for all their staffs do and fail to do. A commander can delegate this authority, but not the responsibility. The final decision, as well as the final responsibility, remains with the commander.

On the other hand, control is the authority to direct people to accomplish missions. A commander has staff who exert "control" over their subordinates but not command, i.e., the principal staff may direct their staff members to do things. The commander can hold the principal staff responsible for their actions, but as their commander, he/she is still ultimately responsible for those actions. Even

if someone far down the chain who has no authority over anyone acts or fails to act as directed, the commander remains ultimately responsible for that person's actions and their effect on the larger goals and missions.

In practice, TAG may be ultimately responsible for the Alaska National Guard. But, if this is so, then TAG should be a commander, just as those who are appointed to be commanders on active duty. The structure enabled by HB 152 resembles the federal Department of Defense model, where the President is commander-in-chief who commands subordinate commanders in an operational environment, i.e., combatant commanders. This structure will not degrade the other military functions TAG holds, such as principal advisor to the Governor on military matters.

Extant law allows only the Governor to order the organized militia into State Active Duty; this bill grants TAG authority to activate the organized militia in emergency situations when the Governor is not immediately available. While we expect such circumstances will be rare, we believe it is vital to the safety and security of Alaskans for their organized militia to be able to respond immediately whenever they might be needed.

HB 152 also empowers TAG to promulgate regulations consistent with federal active duty regulations, Alaska state law, and the Governor's intent, for internal use in administration and command of the organized militia. This update would help bring Alaska's organized militia into the 21st Century and on par with or better than other state National Guards.

We have reviewed HB 152 section by section, and offer the following analyses and observations:

Section 1. Establishes TAG as in both command and control of the organized militia. At present, the Governor is commander-in-chief and commands the organized militia, while TAG is in control, subordinate to the Governor, but not statutorily empowered as the military commander. HB 152 delegates the Governor's command authority to TAG to carry out the Governor's policies in accordance with the Governor's instructions, and empowers TAG to adopt regulations necessary to the operation of the organized militia as long as they are in compliance with federal law and regulation. Command authority enables TAG to exert legal authority over personnel, including the power to discipline, and grants TAG legal responsibility for missions and the resources needed to carry them out.

Section 2. Establishes circumstances under which the Governor may order the organized militia into active state service, and eliminates the Governor's ability to delegate to TAG the authority to order members of the organized militia into active state service in order to fight wildland fires. That authority is clarified and broadened in Section 3.

Section 3. Describes a range of circumstances under which TAG may order members of the organized militia into active state service to respond to emergencies if the Governor is not immediately available to do so, and directs TAG to make reasonable and continuous efforts to contact the Governor to affirm, amend, or reverse TAG's actions. This Section also restricts TAG's authority in a number of situations, preventing ordering into active state service in ways that would subject Alaska citizens to regulatory, prescriptive, proscriptive, or compulsory military power, including lawful labor action or activity. It further specifies no part of the organized militia may leave the state without the Governor's consent when in active state service. If the Governor's approval is not available, TAG must reassess orders into active service no later than 72 hours after

such orders take effect. TAG may order members of the organized militia into full-time duty with the TAG's office.

Section 4. While the Governor's orders under this Section are final, TAG's decisions are always subject to the Governor's review.

Section 5. This Section clarifies existing law specifying the ASDF may exist only with the express consent of the U.S. Congress. It defines the ASDF as a force subject to rules, guidelines and authorities as specified by TAG. Finally, this Section clarifies an ASDF Member engaged in inactive duty, training, or community service duties shall receive benefits if the Member suffers an injury or disability, or dies in the line of duty, as prescribed by the Alaska Worker's Compensation Act (AS 23.30).

Section 6. Specifically adds the ASDF to the list of entities comprising Alaska's organized militia.

Section 7. Establishes TAG and Assistant Adjutants General are subject to regulations under this chapter of law and paid according to state law.

Sections 8-10 streamline day-to-day administrative matters and free the Governor from statutory responsibility to make or approve personnel decisions better made by TAG.

Section 8. Allows TAG to recognize federal withdrawal of an officer's commission by vacating and/or terminating that officer's state appointment without prior approval of the Governor, as present law requires.

Section 9. Allows TAG to accept resignations of commissioned or warrant officers without prior approval of the Governor, as present law requires.

Section 10. Allows TAG to place the names of commissioned officers and enlisted persons upon the retired list without prior approval of the Governor, which present law requires.

Section 11. Relaxes the requirement for militia units to be served by an active armory before being issued arms or equipment; thus, enabling small scout detachments of the ASDF to form in small communities that do not have, and are perhaps unlikely to ever have, state armories. This Section also rescinds the requirement for all proceeds received from rental or other nonmilitary use of an armory to be deposited in the state General Fund, since federal rules require the state to reduce claims for reimbursement for facilities maintenance from the federal government in accordance with the terms of the Master Cooperative Agreement with the National Guard Bureau.

Section 12. Allows TAG to authorize, to the extent funds are available, payment of tuition and fees for ASDF Members to attend educational, vocational, or technical schools in Alaska, as is presently available to Alaska National Guard Members. TAG may prioritize categories of education benefits to encourage recruitment and retention in the four elements of the organized militia. Payments are to be made only to militia Members in good standing in both the educational program and in the organized militia.

Section 13. Specifies regulations adopted under this statute may not be contrary to federal law or regulation.

Section 14. Directs regulations adopted under this statute must conform as nearly as practicable to rules governing the U.S. Armed Forces.

Section 15. Allows the Governor to delegate authority and provide for subdelegation, except the powers given the Governor to convene general courts-martial (AS 26.05.450).

Section 16. Repeals existing language which is either no longer necessary, amended, or re-established in this statute, including:

- Relationship between Governor and TAG regarding command and control of the organized militia (AS 26.05.170);
- Mandatory annual active duty training at sites other than regular bases (AS 26.05.235) -- Annual Training schedules are controlled by federal requirements to organize, train, and equip forces to meet federal mission requirements. A state-imposed limit on how this training is accomplished is inconsistent with the federal program that funds it. Further, while the National Guard strives to accomplish training in a wide variety of operating environments, demanding it of the ASDF on a minimum frequency could introduce additional costs to the program;
- Use of the organized militia against labor organizations (AS 26.05.340(a));
- Organized militia leaving the state with arms and equipment without Governor's consent (AS 26.05.340(b)); and
- Necessary regulations adopted by TAG and approved by the Governor (AS 26.05.340(d))

Finally, we note language in Section 1 stating "the adjutant general shall adopt regulations" is essentially being moved from AS 26.05.190 to AS 26.05.060. As with recent legislation establishing the new Alaska Code of Military Justice, we take the position that because regulations adopted by TAG affect only the organized militia and not the public at large, they are not subject to public review as required by the Administrative Procedures Act (APA) for other regulations. We maintain this exemption from the APA is the correct interpretation of the statute, but it is not entirely explicit. As this point may be questioned by legislators reviewing the bill in committee, it might prove worthwhile to amend HB 152 to specifically include exemption from the APA in AS 26.05.060.

We hope this information is helpful.

Sincerely yours,



Robert A.K. Doehl
Deputy Commissioner