



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Military and
Veterans' Affairs

Office of the Commissioner

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April 12, 2017

The Honorable Chris Tuck
Alaska House of Representatives
204 Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Tuck:

HB 152 is an important step in continuing efforts to modernize Alaska's organized militia. The bill 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. Several key features of this legislation are as follows:

1. **The Adjutant General (TAG) commands and controls the organized militia, under the direction of the Governor as Commander-in-Chief, who maintains civilian oversight**
2. **HB 152 enhances the organized militia's emergency response capability**
3. **HB 152 maintains state sovereignty and control of the organized militia**
4. **The Alaska State Defense Force always remains under state control**
5. **TAG has reasonable ability to promulgate appropriate regulations**
6. **TAG as commander is important to good order and discipline**
7. **New authority for TAG to respond to emergencies is similar to proven response mechanisms**
8. **Alaskans remain safe in light of restrictions on TAG's authority to order active service**

Here are additional details on each of these points:

1. **The Adjutant General (TAG) commands and controls the organized militia, under the direction of the Governor as Commander-in-Chief, who maintains civilian oversight**

HB 152 preserves the Governor's authority over Alaska's organized militia. It recognizes the Governor's constitutional position as commander-in-chief with final authority over the Alaska organized militia, and ultimate responsibility to the people of the State of Alaska, including the ability to order the militia into active state service under conditions set in statute.

HB 152 clarifies TAG, who already possesses statutory control of the organized militia, is also in command. 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 have authority to direct people to accomplish those missions. It is logical, but not explicitly set in statute, that TAG should have both control and command of the organized militia.

A military commander is responsible for ensuring mission success. Commanders have the authority to direct individuals to perform tasks and the responsibility for a mission's success or failure. Under current law, TAG is not responsible for those successes or failures. Alaska Statute should recognize TAG has both authority and responsibility. In practice, TAG is responsible for the organized militia, and therefore command responsibility should be explicitly conferred.

The bill authorizes TAG to act if urgent circumstances require, without the Governor's direct order, but TAG must then secure the Governor's approval as soon as practicable. The Governor's unavailability during an emergency should not inadvertently cost lives when immediate response is needed. Alaskans' safety during an emergency is paramount. Under present law, if civil authorities request militia assistance for any situation other than wildland fire, TAG may not authorize personnel or assign emergency response assets without the Governor's order. HB 152 requires TAG to make reasonable, continuous efforts to secure the Governor's approval. If such efforts do not succeed within 72 hours, which is the timeline used by active component for immediate response authority, TAG must reassess whether there remains a continued need for the organized militia.

2. HB 152 enhances the organized militia's emergency response capability

Existing law authorizes only the Governor to order the organized militia into active state service, except the Governor may delegate to TAG the authority to call out the organized militia in case of wildland fire. HB 152 recognizes TAG should be able to order a response to a catastrophic earthquake, flash flood, volcanic eruption, or other emergency when requested by a civil authority, under imminently serious conditions, and if time does not permit approval from higher authority. Present statute unnecessarily restricts the organized militia's ability to quickly assist first responders. This revision gives The Adjutant General the same authority conferred on active component commanders and ensures the organized militia will be able to respond in a quicker manner. HB 152 focuses on the need for a quick response to an emergency while continuing to provide the Governor's oversight of that response.

3. HB 152 maintains state sovereignty and control of the organized militia

The U.S. Constitution requires any military force in the United States – including the Alaska National Guard and the Alaska State Defense Force – to follow federal laws and regulations. States have only the authority granted them by federal statute or regulation. Federal law enables Alaska to establish a state defense force to be used within the state as its Governor considers necessary. HB 152 cedes no authority to the federal government.

4. The Alaska State Defense Force always remains under state control

The Alaska National Guard may be called into federal active duty by the President of the United States, but the Governor always maintains full authority over the Alaska State Defense Force, i.e., it may not be called, ordered, or drafted into the U.S. armed forces. Congress has enacted 32 USC 109, authorizing the states to maintain state defense forces and, except for the provisions of National Guard Regulation 10-4 (which, among other things, directs no federal funds shall be expended or federal equipment used in support of state defense forces, and said forces will always remain under state control), allows the states to run the state defense forces. The State of Alaska may elect to incorporate federal guidelines as ASDF regulations where appropriate. However, nothing in federal law prohibits TAG from administering and commanding a state defense force. HB 152 clearly acknowledges both of these provisions.

5. TAG has reasonable ability to promulgate appropriate regulations

In keeping with the concepts of command and control, HB 152 empowers TAG to promulgate regulations – consistent with federal regulations, Alaska state law, and the Governor’s intent – for internal use in administration and command of the organized militia. This update would help address regulatory deficiencies, correct outdated policies or implement them where none presently exist, and do so efficiently – always with the approval of the Governor – thus bringing Alaska’s organized militia into the 21st Century. This provision does not in any way reduce the Governor’s oversight of the organized militia.

6. TAG as commander is important to good order and discipline

The U.S. Army and U.S. Air Force recognize commanders’ importance and place responsibility on them through regulation. For example, Army Command Policy lays out many responsibilities and duties of commanders, including whistleblower protections. The chain of command must ensure all complainants are protected from reprisal or retaliation. Army and Air Force commanders are appropriately empowered to relieve subordinates from command due to misconduct, poor judgment, or the inability of the subordinate to complete assigned duties. Without statutory authority of command, TAG is technically not responsible for protecting complainants and cannot relieve a subordinate of command. The Alaska National Guard is a full-time military organization and requires the direct attention of a full-time commander, subject to civilian oversight, with the authority to act.

7. New authority for TAG to respond to emergencies is similar to proven response mechanisms

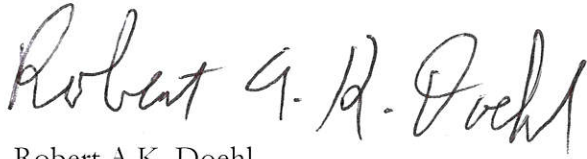
Language in the bill empowering TAG to order the organized militia into active state service mirrors long-established federal “Immediate Response Authority (IRA).” IRA provides legal authority to use military assets when imminently serious conditions exist in order to save lives, prevent human suffering, or mitigate great property damage. In other words, IRA is broad authority to use military resources and personnel when first responders believe immediate use of military resources and personnel can help reduce emergency response times and thus prevent fatalities, suffering, or property damage. And, as noted above, there is both civilian oversight and a requirement to receive higher command approval as standard procedures for Immediate Response Authority.

8. Alaskans remain safe in light of restrictions on TAG's authority to order active service

Using standard IRA language, HB 152 seeks to assist first responders with emergencies but never to allow the organized militia to regulate the civilian population's behavior. It appropriately restricts TAG's authority and prevents the organized militia from being used against lawful activity or organized labor actions, such as strikes and demonstrations, but allows response to riot, violent mob activity, or other tumult; when the Governor orders the organized militia into active state service

Existing statutory language pre-empts use of militias to break up labor strikes and other lawful union activity as happened in the Nineteenth and Twentieth Centuries. The Committee Substitute for HB 152 expands and clarifies this important restriction, prohibiting militia interference with any lawful activity, not just organized labor actions.

Sincerely,

A handwritten signature in black ink that reads "Robert A.K. Doehl". The signature is written in a cursive, flowing style with a large initial 'R'.

Robert A.K. Doehl
Deputy Commissioner