

**CS FOR HOUSE BILL NO. 152(MLV)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Offered: 4/5/17

Referred: State Affairs

Sponsor(s): HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the organized militia; and relating to the authority of the adjutant  
2 general."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* Section 1. AS 26.05.060 is amended to read:

5           **Sec. 26.05.060. Control and command of the organized militia [ALASKA**  
6 **NATIONAL GUARD AND ALASKA NAVAL MILITIA]. The governor, by**  
7 **virtue of this office, is the commander in chief [AS EX OFFICIO COMMANDER]**  
8 **of the militia of the state. The governor's command is exercised through the**  
9 **adjutant general, who shall carry out the policies of the governor in military**  
10 **affairs. The adjutant general represents the governor and shall act in conformity**  
11 **with the governor's instructions. The adjutant general shall exercise control and**  
12 **command of the military department of the state. The adjutant general shall**  
13 **adopt regulations that provide for the organization, administration, and**  
14 **equipment of the organized militia that are not contrary to federal law or**

1        **regulations** [HAS COMMAND OF THE ALASKA NATIONAL GUARD AND  
 2        THE ALASKA NAVAL MILITIA WHILE THEY ARE NOT IN ACTIVE  
 3        FEDERAL SERVICE. THE GOVERNOR MAY ADOPT NECESSARY  
 4        REGULATIONS FOR THEM]. The Alaska National Guard and the Alaska Naval  
 5        Militia and their members are subject to all federal laws and regulations relating to the  
 6        National Guard and Naval Militia of the several states and territories and of the United  
 7        States.

8        \* **Sec. 2.** AS 26.05.070 is amended to read:

9                **Sec. 26.05.070. Orders for [GOVERNOR MAY ORDER] organized**  
 10        **militia into active state service.** In the event of war, disaster, insurrection, rebellion,  
 11        tumult, catastrophe, wildland fire, invasion, or riot; or if a mob or body of men act  
 12        together by force with intent to commit a felony or to offer violence to persons or  
 13        property, or by force and violence to break and resist the laws of the state, or the  
 14        United States; or in the case of imminent danger of the occurrence of any of these  
 15        events; or whenever responsible civil authorities fail to preserve law and order, or  
 16        protect life and property, or the governor believes that failure is imminent, the  
 17        governor may order the organized militia or any part of it, into active state service to  
 18        execute the laws and to perform duties in connection with them that the governor  
 19        considers proper. Whenever any portion of the militia is ordered into active state  
 20        service by the governor, it becomes an additional police force, retaining its separate  
 21        entity and operating at all times as a military organization under military command,  
 22        with power to cooperate with but not to supersede the existing civilian law  
 23        enforcement officers whenever possible, for the re-establishment of law and order and  
 24        for the protection of life and property. The governor may also order members of the  
 25        organized militia to active state service, with their consent, for the purpose of training  
 26        or for full-time duty with the office of the adjutant general. [IN THE EVENT OF  
 27        WILDLAND FIRE, THE GOVERNOR MAY DELEGATE TO THE ADJUTANT  
 28        GENERAL THE GOVERNOR'S AUTHORITY UNDER THIS SECTION TO  
 29        ORDER SOME OR ALL OF THE ORGANIZED MILITIA INTO ACTIVE STATE  
 30        SERVICE TO FIGHT WILDLAND FIRE. IN THIS SECTION, "WILDLAND FIRE"  
 31        INCLUDES THE UNCONTROLLED BURNING OF GRASS, BRUSH, TIMBER,

1 AND OTHER VEGETATIVE MATERIAL.]

2 \* **Sec. 3.** AS 26.05.070 is amended by adding new subsections to read:

3 (b) In the event of wildland fire, earthquake, flooding, or other natural  
4 catastrophe, or under imminently serious conditions where time or circumstance does  
5 not permit approval from the governor, the adjutant general may provide an immediate  
6 response by temporarily ordering members of the organized militia into active state  
7 service or otherwise employing the resources under its control, subject to any  
8 supplemental direction by the governor, to save lives, prevent human suffering, or  
9 mitigate great property damage in the state.

10 (c) Notwithstanding (b) of this section, the adjutant general may not order any  
11 part of the organized militia into active state service for actions that would subject  
12 civilians to the use of military power that is regulatory, prescriptive, proscriptive, or  
13 compulsory, unless approved by the governor before giving the order.

14 (d) The adjutant general shall make reasonable and continuous efforts to  
15 contact the governor for approval of any orders issued under this section.

16 (e) If the adjutant general exercises the authority under (b) of this section, but  
17 does not receive the governor's approval under (d) of this section, the adjutant general  
18 shall reassess whether there remains a continued need for an organized militia  
19 response as soon as practicable, but not later than 72 hours after the order under (b) of  
20 this section was given.

21 (f) The organized militia may not be used against or to mitigate a lawful  
22 activity, including an organized labor activity.

23 (g) No part of the organized militia in active state service may leave the state  
24 with arms or equipment of the state without the consent of the governor.

25 (h) The adjutant general may order members of the organized militia to active  
26 state service, with their consent, for full-time duty with the office of the adjutant  
27 general.

28 (i) In this section, "wildland fire" includes the uncontrolled burning of grass,  
29 brush, timber, and other vegetative material.

30 \* **Sec. 4.** AS 26.05.080 is amended to read:

31 **Sec. 26.05.080. Decision of governor final.** Whenever any portion of the

1 militia is ordered to duty by the governor, the decision of the governor in this matter is  
 2 final. **Whenever any portion of the militia is ordered to duty by the adjutant**  
 3 **general, the decision is subject to review by the governor.**

4 \* **Sec. 5.** AS 26.05.100 is amended to read:

5 **Sec. 26.05.100. Alaska State Defense Force.** **With the consent of the United**  
 6 **States Congress, a** [A] state militia, known as the Alaska State Defense Force, may  
 7 be organized through voluntary enlistments under regulations as to **commission,**  
 8 **enlistment, administration, equipment, maintenance,** discipline, and training that  
 9 may be prescribed by the **adjutant general under AS 26.05.060 and 26.05.360**  
 10 [GOVERNOR]. During the time that the Alaska National Guard or the Alaska Naval  
 11 Militia, or any part of either of them, is not available to the state by reason of active  
 12 federal service, or the National Guard or Naval Militia requires augmentation to  
 13 perform its state mission, the governor may activate the Alaska State Defense Force.  
 14 **Members of the Alaska State Defense Force performing inactive duty or training**  
 15 **or community service duties shall receive benefits under AS 26.05.260 if the**  
 16 **member suffers an injury, disability, or death while in the line of duty.**

17 \* **Sec. 6.** AS 26.05.190(a) is amended to read:

18 (a) [THE ADJUTANT GENERAL SHALL ADOPT AND PUBLISH  
 19 ORDERS AND REGULATIONS NOT CONTRARY TO LAW THAT IN THE  
 20 ADJUTANT GENERAL'S JUDGMENT ARE NECESSARY TO BRING THE  
 21 ORGANIZATIONS, ARMAMENT, EQUIPMENT, AND DISCIPLINE OF THE  
 22 ORGANIZED MILITIA TO A HIGH DEGREE OF EFFICIENCY.] The adjutant  
 23 general shall perform all the administrative functions incident to the operation of the  
 24 Alaska National Guard, **the Alaska State Defense Force,** and the Alaska Naval  
 25 Militia. In addition, the adjutant general shall have an inventory taken at least once  
 26 each year of all state military stores, property, and funds under the jurisdiction of the  
 27 adjutant general.

28 \* **Sec. 7.** AS 26.05 is amended by adding a new section to read:

29 **Sec. 26.05.195. Adjutant general and assistant adjutant general duty**  
 30 **status.** The adjutant general and assistant adjutants general are subject to regulations  
 31 under this chapter and paid according to state law.

1 \* **Sec. 8.** AS 26.05.210(b) is amended to read:

2 (b) When federal recognition of an officer's commission or warrant has been  
3 withdrawn, the officer's state appointment as a commissioned or warrant officer may  
4 be terminated, and the commission or warrant vacated upon [THE  
5 RECOMMENDATION OF THE ADJUTANT GENERAL AND] approval of the  
6 adjutant general [GOVERNOR].

7 \* **Sec. 9.** AS 26.05.210(d) is amended to read:

8 (d) Commissioned or warrant officers may tender their resignations through  
9 National Guard or Naval Militia command channels. Resignations shall be in writing,  
10 stating the reason for resignation, and shall take effect when accepted by the adjutant  
11 general [UPON THE APPROVAL OF THE GOVERNOR].

12 \* **Sec. 10.** AS 26.05.220 is amended to read:

13 **Sec. 26.05.220. Retired list.** A commissioned officer and enlisted person upon  
14 reaching the maximum age prescribed for active duty by appropriate regulations and a  
15 commissioned officer or enlisted person who is disabled or incapacitated for active  
16 duty through no personal fault or dereliction, and a commissioned officer or enlisted  
17 person who serves honorably with the Alaska National Guard or with the Alaska  
18 Naval Militia in any capacity and is unable to perform further active duty due to  
19 limitations imposed by appropriate regulations may be placed upon the retired list  
20 upon recommendation by the adjutant general [AND APPROVAL OF THE  
21 GOVERNOR].

22 \* **Sec. 11.** AS 26.05.230(b) is amended to read:

23 (b) The armory of each battalion, company, or other unit is subject to the order  
24 of the adjutant general and under the charge of its armory board which shall keep in  
25 the armory all property furnished by the state. [EXCEPT FOR SCOUT  
26 BATTALIONS ORGANIZED UNDER SPECIAL AUTHORITY OF THE  
27 SECRETARY OF THE ARMY, A UNIT MAY NOT BE FURNISHED WITH  
28 ARMS OR EQUIPMENT UNTIL A SUITABLE ARMORY IS PROVIDED FOR  
29 THEIR DEPOSIT.] Subject to regulations adopted by the adjutant general, an armory  
30 may be used for any reasonable and legitimate civilian activity so long as the activity  
31 does not interfere with its use for military purposes. [PROCEEDS RECEIVED AS

1 RENTAL OR OTHERWISE AT AN ARMORY FROM NONMILITARY USE  
2 SHALL BE DEPOSITED IN THE GENERAL FUND.]

3 \* **Sec. 12.** AS 26.05.296(a) is amended to read:

4 (a) To the extent funds are available, the adjutant general may authorize the  
5 payment of up to 100 percent of the cost of tuition and required fees for each active  
6 member of the Alaska National Guard, the Alaska State Defense Force, or the  
7 Alaska Naval Militia if the member attends an educational, vocational, or technical  
8 training school in this state. The adjutant general may prioritize categories of  
9 education benefits to encourage recruitment and retention of Alaska National Guard,  
10 Alaska State Defense Force, or Alaska Naval Militia members. Payments  
11 authorized under this section for active members of the Alaska National Guard, the  
12 Alaska State Defense Force, or the Alaska Naval Militia continue so long as the  
13 active member is a student in good standing in the educational program or class and  
14 participates satisfactorily in unit training activities.

15 \* **Sec. 13.** AS 26.05.360(b) is amended to read:

16 (b) The regulations adopted under this section must

17 (1) provide for nonjudicial punishment; the regulations for nonjudicial  
18 punishment may not provide for confinement or separation from military service or  
19 prohibit a member of the militia from declining the imposition of nonjudicial  
20 punishment in favor of a court-martial;

21 (2) as the adjutant general and the governor consider practicable, apply  
22 the principles of law and the rules of evidence and procedure governing military  
23 criminal cases in the courts of the armed forces of the United States, but may not be  
24 contrary to or inconsistent with this chapter or the applicable Alaska Rules of  
25 Evidence;

26 (3) include rules of pretrial, trial, and post-trial procedure, including  
27 methods of proof, for cases before courts-martial and courts of inquiry;

28 **(4) not be contrary to federal law or regulations.**

29 \* **Sec. 14.** AS 26.05.360 is amended by adding a new subsection to read:

30 (e) The regulations adopted under this section must conform as nearly as  
31 practicable to regulations governing the armed forces of the United States.

1 \* **Sec. 15.** AS 26.05.660 is amended to read:

2           **Sec. 26.05.660. Delegation by the governor.** The governor may delegate any  
3 authority vested in the governor under the code of military justice, and provide for the  
4 subdelegation of the authority, except the powers given to the governor by  
5 **AS 26.05.450** [AS 26.05.170 AND 26.05.450].

6 \* **Sec. 16.** AS 26.05.170, 26.05.235, 26.05.340(a), 26.05.340(b), and 26.05.340(d) are  
7 repealed.