

**ALASKA STATE LEGISLATURE**  
**HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS**

March 30, 2017

1:07 p.m.

**MEMBERS PRESENT**

Representative Chris Tuck, Chair  
Representative Gabrielle LeDoux, Vice Chair  
Representative Justin Parish  
Representative Ivy Spohnholz  
Representative George Rauscher  
Representative Lora Reinbold  
Representative Dan Saddler

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 152

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

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 152

SHORT TITLE: ORGANIZED MILITIA; AK ST. DEFENSE FORCE

SPONSOR(S): MILITARY & VETERANS' AFFAIRS

03/06/17	(H)	READ THE FIRST TIME - REFERRALS
03/06/17	(H)	MLV, STA
03/14/17	(H)	MLV AT 1:00 PM GRUENBERG 120
03/14/17	(H)	-- MEETING CANCELED --
03/23/17	(H)	MLV AT 1:00 PM GRUENBERG 120
03/23/17	(H)	Heard & Held
03/23/17	(H)	MINUTE(MLV)
03/30/17	(H)	MLV AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

ROBERT DOEHL, Deputy Commissioner  
Office of the Commissioner  
Department of Military & Veterans' Affairs

Joint Base Elmendorf-Richardson, Alaska

**POSITION STATEMENT:** Answered questions during the hearing of HB 152.

MEGAN WALLACE, Attorney  
Legislative Legal Counsel  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing of HB 152.

**ACTION NARRATIVE**

[1:07:23 PM](#)

**CHAIR CHRIS TUCK** called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:07 p.m. Representatives Tuck, Parish, Rauscher, and Reinbold were present at the call to order. Representatives Spohnholz, Saddler, and LeDoux arrived as the meeting was in progress.

**HB 152-ORGANIZED MILITIA; AK ST. DEFENSE FORCE**

[1:08:10 PM](#)

CHAIR TUCK announced that the only order of business would be HOUSE BILL NO. 152, "An Act relating to the organized militia; and relating to the authority of the adjutant general."

[1:08:46 PM](#)

ROBERT DOEHL, Deputy Commissioner, Office of the Commissioner, Department of Military & Veterans' Affairs (DMVA), stated DMVA's support for HB 152.

REPRESENTATIVE PARISH asked whether DMVA has objections to a forthcoming amendment he submitted for review by the department.

MR. DOEHL said DMVA has no objections.

REPRESENTATIVE REINBOLD questioned whether DMVA has received testimony - in support of or in opposition to HB 152 - from members of the Alaska State Defense Force (ASDF).

MR. DOEHL related he has heard support expressed by Colonel John James, commander of ASDF.

REPRESENTATIVE REINBOLD expressed her interest in receiving a unanimous resolution from members of ASDF.

MR. DOEHL expressed his belief command has made ASDF members aware of the bill; however, he said he was unaware of a resolution from members.

REPRESENTATIVE REINBOLD restated her question as to if, and how, every member was notified and given an opportunity to respond.

MR. DOEHL pointed out [the legislation] is a matter of public record. He acknowledged each member has not been individually served notice of the bill, nor has a unanimous resolution been solicited.

CHAIR TUCK noted the governor is aware of the legislation.

REPRESENTATIVE REINBOLD surmised many members may not be aware of the bill.

MR. DOEHL said he could not speak to the number of members who have actual knowledge.

REPRESENTATIVE REINBOLD directed attention to written opposition to HB 152 from Lawrence D. Wood [dated 3/20/17] provided in the committee packet. She said the aforementioned testimony is evidence there is opposition to the bill and expressed her opposition to the bill at this time.

MR. DOEHL said Mr. Wood is no longer a member of ASDF; recognized Mr. Wood's previous service.

[1:12:47 PM](#)

REPRESENTATIVE PARISH posited a situation in which the state suffered another major earthquake and members of the organized militia were ordered into service by the governor or the adjutant general. He asked for affirmation that the members are "protected" in terms of possible injuries; however, were members acting as Good Samaritans, they would not have the "umbrella of protections offered by the state."

MR. DOEHL said, "That is correct."

REPRESENTATIVE PARISH surmised offering members more protection is wise; in fact, [the bill, by saving time] may save civilian

lives and honors the state's moral obligation to members of the militia.

MR. DOEHL said, "That is correct."

REPRESENTATIVE RAUSCHER asked what members of the militia would be doing in the aforementioned scenario.

REPRESENTATIVE PARISH said the militia would be trying to save lives and digging civilians out of rubble; if [HB 152 is enacted] and the state can order members of the militia into service, protections would be extended faster, and bureaucracy would not slow down the response to a matter of life and death.

REPRESENTATIVE RAUSCHER recalled previous testimony before the committee from various organizations and agencies that are already in position to respond, without waiting for [authorization from] the governor.

CHAIR TUCK opined HB 152 addresses the rare case when the governor is unavailable. Although fire departments are dispatched without approval from elected officials, the bill allows for a quick response [to an emergency], only when the governor cannot act. He questioned whether the state should hesitate if lives, safety, and the security of Alaska are at risk.

REPRESENTATIVE SADDLER said he had various questions as to the impact of the proposed legislation on the following: the National Guard; the command structure of ASDF; the responsibilities of drafting regulations; certain authorities of the governor. He stated his concern for making unjustified long-term changes to the structure of the state organized militia.

[1:20:37 PM](#)

REPRESENTATIVE REINBOLD directed attention to the bill on page 3, lines 21-22, which read:

(f) The organized militia may not be used against or to mitigate a lawful organized labor action or activity.

REPRESENTATIVE REINBOLD asked for an explanation of [subsection (f) on page 3].

CHAIR TUCK pointed out [subsection (f) on page 3] is existing language in statute.

MR. DOEHL explained the aforementioned existing language originated over 100 hundred years ago and is related to deployment of the National Guard to disperse peaceful [labor] union strikes. He noted the provision specifies "lawful" activity and the governor would still have the authority to deploy the militia in the case of an unlawful action.

REPRESENTATIVE REINBOLD opined the aforementioned subsection is a new subsection added by the bill. She directed attention to page 6, line 28, which read:

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

REPRESENTATIVE REINBOLD cautioned against yielding state sovereignty to federal regulations and law. She clarified her two questions: 1.) whether [subsection (f) on page 3] is necessary; 2.) whether a voluntary state defense force should be subject to federal law or regulations.

MR. DOEHL, in response to Representative Reinbold's second question, said the federal government has explicitly authorized state militias by U.S. Code, Title 32, Section 109, so there is no potential for "contrary to federal law or regulations" with the exception of constitutional violations which are not waivable.

REPRESENTATIVE REINBOLD said Alaska is the first state to make similar significant changes.

MR. DOEHL said the foregoing statement is incorrect; the changes within HB 152 would put Alaska "more in line with where the other states have already gone."

REPRESENTATIVE REINBOLD remarked:

So, you're saying most of the other states have already done this, they have, they have yielded the, their state defense forces and everything else in this bill, you're saying that most other states have already done this, it that correct?

[1:26:28 PM](#)

MR. DOEHL answered, "[Of] the states where we have done research, they, they have already done, performed these

measures." Furthermore, the state militia is always subject to [the Tenth Amendment to the U.S. Constitution]. In further response to Representative Reinbold pertaining to the specific source of supporting research, he said research was done through online sources and through [WestLaw online legal research service for lawyers].

REPRESENTATIVE REINBOLD asked which specific states had enacted identical legislation.

MR. DOEHL said he could not provide that information at this time.

REPRESENTATIVE RAUSCHER returned attention to the bill on [page 3, lines 21-2], [text provided previously], and asked for the definition of [subsection] (f) [on page 3].

CHAIR TUCK provided a brief description of the origin of labor union organizations, noting that in the late 1800's, the National Guard was manipulated by business corporations and used unlawfully against civilians. He clarified this language is already in statute; however, HB 152 would repeal some provisions, thus [subsection (f) on page 3] is added again.

[1:30:17 PM](#)

REPRESENTATIVE SADDLER moved to report HB 152 out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR TUCK objected, pointing out public testimony has not been heard.

REPRESENTATIVE SADDLER stated his belief that hearing public testimony is not "essential to the process." He restated the motion.

[1:31:12 PM](#)

The committee took a brief at-ease at 1:31 p.m.

[1:32:12 PM](#)

CHAIR TUCK clarified the motion.

[1:32:26 PM](#)

The committee took an at-ease from 1:32 p.m. to 1:34 p.m.

[1:34:06 PM](#)

CHAIR TUCK removed his objection.

REPRESENTATIVE SADDLER withdrew his motion

[1:34:53 PM](#)

REPRESENTATIVE PARISH moved Amendment 1, [labeled 30-LS0366\O.2, Wallace, 3/23/17], which read:

Page 3, line 22:

Delete "organized labor action or activity"

Insert "activity, including an organized labor activity"

[1:35:00 PM](#)

CHAIR TUCK objected for discussion purposes.

REPRESENTATIVE PARISH said Amendment 1 maintains the explicit protection for organized labor and explicitly forbids the use of the organized militia against other lawful activities such as [First Amendment to the U.S. Constitution] protected protests.

CHAIR TUCK removed his objection.

REPRESENTATIVE REINBOLD objected to Amendment 1, expressing her understanding that the amendment would cause [subsection (f) on page 3] to read, "the organized militia may not be used against or to mitigate an activity, including an organized labor activity."

REPRESENTATIVE PARISH said no. He pointed out Amendment 1, on line 2, deletes "organized labor action or activity," thus the subsection would read, "the organized militia may not be used against or to mitigate a lawful activity, including an organized labor activity." In response to Representative Reinbold's question as to his intent, Representative Parish recalled a time when the National Guard was used against Vietnam War protestors [and students] at Kent State University [in Ohio, May 4, 1970], and he urged to explicitly forbid the use of armed forces against citizens exercising their rights.

REPRESENTATIVE REINBOLD asked "Did someone bring [the amendment] to you?"

REPRESENTATIVE PARISH reminded the committee he offered a similar conceptual amendment to HB 152 [at the hearing of 3/23/17] that was out of order. Amendment 1 was prepared by Legislative Legal Services, Legislative Affairs Agency [at his request].

CHAIR TUCK pointed out Amendment 1 protects other lawful activities in addition to those of organized labor.

MR. DOEHL advised DMVA's interpretation of Amendment 1 is that the organized militia would be barred from infringing upon the rights of any lawful activity.

REPRESENTATIVE REINBOLD repeated her question.

REPRESENTATIVE PARISH further explained Amendment 1 extends the protection of organized labor to that of all people engaged in a lawful activity.

[1:42:10 PM](#)

REPRESENTATIVE SADDLER asked for the distinction between an action and an activity.

REPRESENTATIVE PARISH said Legislative Legal Services made a change from antiquated language; for example, organized labor actions refer to strikes and other actions taken by labor organizations which are protected by law. An activity is an action in process.

REPRESENTATIVE SADDLER clarified his question is whether an activity may be illegal.

REPRESENTATIVE PARISH returned attention to the bill on page 3, line 21 [text provided previously], and pointed out the word lawful is not excerpted by Amendment 1, thus said activities must be lawful to enjoy protection. Representative Parish, in response to Representative Saddler's question as to whether only legal activities are encompassed, restated the purpose of Amendment 1 is to expand the protection from specifically lawful organized labor actions and activities to all lawful activities.

[1:45:20 PM](#)

REPRESENTATIVE SADDLER moved [Conceptual] Amendment 1 to Amendment 1. He then withdrew Conceptual Amendment 1 to Amendment 1, and stated his goal is to remove "organized labor action or".

[1:45:54 PM](#)

REPRESENTATIVE LEDOUX opined DMVA interprets [subsection (f) on page 3] as to preclude the organized militia from engaging in any action against any lawful activity.

[1:46:33 PM](#)

MR. DOEHL said that is correct.

REPRESENTATIVE LEDOUX suggested the existing statute is an anachronism from the time a militia was used as organized labor strikebreakers.

MR. DOEHL agreed about the origin of the language. He advised an activity not modified by "organized labor" is seen as a [First Amendment to the U.S. Constitution] protected, lawful activity, although there may be ambiguity.

REPRESENTATIVE RAUSCHER questioned the meaning of [existing subsection (f) on page 3] as originally drafted.

REPRESENTATIVE PARISH explained [existing subsection (f) on page 3] is ambiguous, which is corrected by Amendment 1.

REPRESENTATIVE RAUSCHER suggested adding "including a legal organized labor activity."

REPRESENTATIVE PARISH recalled his original [conceptual amendment] read, "including those of organized labor," although Amendment 1 reads as drafted by Legislative Legal Services.

CHAIR TUCK suggested the committee hear an opinion from Legislative Legal Services.

[1:52:01 PM](#)

REPRESENTATIVE REINBOLD moved [Conceptual] Amendment 2 to Amendment 1 that would delete ", including an organized labor activity" and would insert a period after the word "activity."

[1:52:19 PM](#)

CHAIR TUCK objected for discussion purposes.

REPRESENTATIVE LEDOUX urged for an opinion from Legislative Legal Services.

[1:53:10 PM](#)

The committee took a brief at-ease.

REPRESENTATIVE LEDOUX pointed out Section 3 is a new section, and yet contains antiquated language.

REPRESENTATIVE PARISH explained related language in AS 26.05 340(a) addresses strikebreaking.

CHAIR TUCK, in response Representative LeDoux's question as to whether [AS 26.05.340(a)] would be repealed by HB 152, said yes, and explained HB 152 would remove sections from existing statute and would transfer the original intent into a new [section].

[1:57:00 PM](#)

REPRESENTATIVE SADDLER asked whether it is the intent of the sponsor of HB 152 to provide special protection only for organized labor, or for any legal activity.

[1:57:37 PM](#)

MR. DOEHL affirmed HB 152 repeals AS 26.05.340(a), (b,) and (d). He said the intent of the sponsor is to provide protections from the militia being deployed against any lawful activity.

REPRESENTATIVE SADDLER surmised Conceptual Amendment 2 to Amendment 1 would achieve DMVA's goal.

CHAIR TUCK opined the language [in the bill] is specific due to its historical perspective.

REPRESENTATIVE REINBOLD asked whether Mr. Doehl objects to Conceptual Amendment 2 to Amendment 1.

[2:00:02 PM](#)

MR. DOEHL said he has no objection.

[2:00:58 PM](#)

MEGAN WALLACE, Attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, opined [on page 3, lines 21-22, subsection (f)] modifies only organized labor action thus the [subsection] prohibits the militia being used against a lawful organized labor action or activity, not any activity in general.

REPRESENTATIVE REINBOLD maintained the necessity of Conceptual Amendment 2 to Amendment 1.

CHAIR TUCK stressed the language of Amendment 1 [unamended] is inclusive of all lawful activity.

REPRESENTATIVE SPOHNHOLZ called for the question on Conceptual Amendment 2 to Amendment 1.

REPRESENTATIVE REINBOLD restated her Conceptual Amendment 2 to Amendment 1.

[2:04:29 PM](#)

A roll call vote was taken. Representatives Reinbold, Rauscher, and Saddler voted in favor of Conceptual Amendment 2 to Amendment 1. Representatives Spohnholz, LeDoux, Parish, and Tuck voted against it. Therefore, Conceptual Amendment 2 to Amendment 1 failed by a vote of 3-4.

[2:04:57 PM](#)

The committee took a brief at-ease.

[2:05:32 PM](#)

REPRESENTATIVE SPOHNHOLZ stated her support for Amendment 1 due to the amendment's explicit language related to organized labor.

REPRESENTATIVE SADDLER cautioned against passing laws based upon historical matters.

REPRESENTATIVE REINBOLD asked for affirmation from Ms. Wallace that the intent of Amendment 1 is to protect everybody.

MS. WALLACE explained Amendment 1 would protect all lawful activities, including organized labor activities.

REPRESENTATIVE LEDOUX surmised without Amendment 1, [HB 152] is ambiguous as to whether only the activities of organized labor are protected.

MS. WALLACE advised subsection (f) [on page 3] was a restriction against using the organized militia against a lawful organized labor action or activity; as written, the bill would not expressly prohibit using the organized militia against other lawful activities. In further response to Representative LeDoux's concern about the purpose of Amendment 1, she agreed Amendment 1 achieves the purpose of including all lawful activities.

[2:11:23 PM](#)

REPRESENTATIVE PARISH directed attention to [the bill on page 3, lines 10-13] which read:

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

REPRESENTATIVE PARISH stated there is value to repeating language when pertinent to the rights of citizens.

CHAIR TUCK removed his objection to Amendment 1.

[2:13:12 PM](#)

REPRESENTATIVE SADDLER objected to Amendment 1.

[2:13:34 PM](#)

A roll call vote was taken. Representatives Spohnholz, LeDoux, Parish, Rauscher, Saddler, Reinbold, and Tuck voted in favor of Amendment 1. Therefore, Amendment 1 passed by a vote of 7-0.

[2:14:06 PM](#)

The committee took a brief at-ease.

[2:14:58 PM](#)

CHAIR TUCK paraphrased from the following summary of the bill provided in the committee packet, signed by Deputy Commissioner Doehl and dated 3/22/17 [original punctuation provided]:

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 reestablished 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.

[2:18:26 PM](#)

CHAIR TUCK opened public testimony on HB 152. After ascertaining no one wished to testify, public testimony was closed.

REPRESENTATIVE SADDLER stated the following concerns regarding HB 152: uncertainty related to the bill's ultimate goal; the bill proposes significant changes in the management of the state's organized militia, in particular changes to the management of the Alaska State Defense Force (ASDF) justified by extreme circumstances; unanswered questions related to the current lawful succession of the governor's authority over the organized militia.

MR. DOEHL said he would provide further information related to the current succession of the governor's authority.

REPRESENTATIVE SADDLER questioned if - or when - ASDF was activated into state active duty.

MR. DOEHL said ASDF went into state active duty after the terrorist attacks of September 11, 2001; in the cities of Savoonga and Gambale to assist after storms; to assist evacuation centers during wildland fires; during other support roles after disasters.

REPRESENTATIVE SADDLER asked whether the regulatory authority granted the adjutant general in HB 152 would have allowed

him/her to implement the Alaska Code of Military Justice on his/her sole authority.

MR. DOEHL stated regulations can only be adopted to implement statutes and cannot be enacted without the statutory basis to do so. House Bill 126 [passed in the Twenty-Ninth Alaska State Legislature] followed a statutory change.

REPRESENTATIVE SADDLER repeated his question.

MR. DOEHL remarked:

You would have needed to have had last year's House Bill 126 even if this legislation [had] been enacted because you needed the statutory basis, or you need the statutory power for the, for the adjutant general to take those actions. Until the Alaska Code of Military Justice was enacted last year there would not have been a statutory basis for doing those regulations.

[2:24:49 PM](#)

REPRESENTATIVE SADDLER returned attention to ASDF, pointing out a pattern of efforts to upgrade its status: a budget request for \$210,000 for battalion command structures, legislation to extend workers compensation coverage when training or in state service, and provisions in HB 152 to allow for payments for training and education.

MR. DOEHL acknowledged DMVA recognizes ASDF as a valuable component of the organized militia and feels the aforementioned actions are essential to developing ASDF's capability to serve Alaskans when needed.

REPRESENTATIVE SADDLER asked for ASDF's ten-year personnel history.

MR. DOEHL recalled in 2005, there were around 70-80 active members and today there are over 80 members actively drilling and training. In further response to Representative Saddler's question about whether there is an active recruiting effort, he said ASDF is recruiting through social media and other routes.

REPRESENTATIVE SADDLER inquired as to whether ASDF has been called to active state service before the National Guard was called.

MR. DOEHL advised ASDF came to active duty before the National Guard when running the disaster assistance centers. In further response to Representative Saddler, he added ASDF ran some of the evacuation centers during the wildland fires before all members of the National Guard were activated, which would have been three occasions in the last three years.

[2:28:45 PM](#)

REPRESENTATIVE SADDLER questioned the need to provide upgrades for ASDF when the National Guard is available.

MR. DOEHL expressed DMVA believes there are needs best filled by ASDF; also, after recent deployments, insufficient numbers of National Guard members were in the state.

REPRESENTATIVE SADDLER further asked under what circumstances would the National Guard be incapable - in terms of training, leadership, or equipment - to accomplish a task which ASDF could accomplish.

MR. DOEHL advised there are circumstances when substantial numbers of certain forces of the National Guard are deployed, such as communications detachments. When small specialty functions are deployed, there are no backup capabilities within the National Guard, but there are capable members in ASDF.

REPRESENTATIVE SADDLER asked whether HB 152 provides any limit to the adjutant general's ability to order ASDF members into fulltime duty in the adjutant general's office.

MR. DOEHL said no, except for fiscal constraints.

REPRESENTATIVE SADDLER requested DMVA attach an indeterminate fiscal note to the bill due to the aforementioned provision within HB 152 which would allow additional expenses for personnel. He then asked for an explanation of the difference between control and command.

MR. DOEHL explained control is based upon the right and authority to direct subordinates to complete an action. A person in command is responsible for shaping an action and the overall effort, and for the outcome of said effort.

REPRESENTATIVE SADDLER questioned whether the adjutant general currently has command of the organized militia.

MR. DOEHL said the adjutant general has control and the governor has command.

REPRESENTATIVE SADDLER asked how said absence of command by the adjutant general puts the state in jeopardy.

MR. DOEHL explained not establishing consistent command is an ongoing degradation of the effectiveness of the Alaska Code of Military Justice. In response to Representative Saddler's request for further clarification, he added the adjutant general has the power to implement the Alaska Code of Military Justice; however, to optimize its effectiveness, [not having command] degrades his/her overall efforts to obtain the best organized militia.

REPRESENTATIVE SADDLER cautioned that passing command and control to an unelected official is troublesome.

[2:35:07 PM](#)

REPRESENTATIVE REINBOLD directed attention to the bill on page 4 lines [30-31] which read:

The adjutant general and assistant adjutants general are subject to regulations under this chapter and paid according to state law.

REPRESENTATIVE REINBOLD asked for a description of assistant adjutants general.

MR. DOEHL said assistant adjutants general are the commanders of the Alaska Air National Guard and the Alaska Army National Guard, Brigadier General Karen Mainsfield and Brigadier General Joseph Streff.

REPRESENTATIVE REINBOLD stated her opposition to the bill.

There followed brief clarifying statements.

REPRESENTATIVE SADDLER directed attention to the bill summary of Section 4 provided in the committee packet, signed by Deputy Commissioner Doehl, dated 3/22/17, [text previously provided], and expressed his understanding that the adjutant general's (TAG's) decisions are already subject to the governor's review.

MR. DOEHL said [Section 4] is designed to address the concern about a possible improper delegation of authority. Section 4 clarifies the governor at any time is the elected official and thereby is the ultimate command and authority over the adjutant general; in fact, the proposed change in statute does not remove any authority of the governor.

REPRESENTATIVE SADDLER agreed but stated his concern that the bill gives the adjutant general command and control of the organized militia with the governor retaining only the "slightest legal oversight."

2:40:02 PM

MR. DOEHL pointed out HB 152 creates the identical alignment that is established by federal regulation between the most senior generals in the U.S. military and the U.S. President.

REPRESENTATIVE SADDLER observed if the [U.S.] commander in chief is unable to discharge his/her duties, authority passes to another elected official, the vice president.

MR. DOEHL disagreed, and advised the National Command Authority is in place at the national level when the president cannot be reached.

REPRESENTATIVE SADDLER directed attention to the bill [on page 5, lines 23-31, and continuing to page 6, lines 1-2] which read:

(b) The armory of each battalion, company, or other unit is subject to the order of the adjutant general and under the charge of its armory board which shall keep in the armory all property furnished by the state. [EXCEPT FOR SCOUT BATTALIONS ORGANIZED UNDER SPECIAL AUTHORITY OF THE SECRETARY OF THE ARMY, A UNIT MAY NOT BE FURNISHED WITH ARMS OR EQUIPMENT UNTIL A SUITABLE ARMORY IS PROVIDED FOR THEIR DEPOSIT.] Subject to regulations adopted by the adjutant general, an armory may be used for any reasonable and legitimate civilian activity so long as the activity does not interfere with its use for military purposes. [PROCEEDS RECEIVED AS RENTAL OR OTHERWISE AT AN ARMORY FROM NONMILITARY USE 1 SHALL BE DEPOSITED IN THE GENERAL FUND.]

REPRESENTATIVE SADDLER and asked whether the intent of proposed Section 11 is for the adjutant general to issue weapons to members of ASDF.

MR. DOEHL said the decisions on what equipment would be issued to ASDF would be made based on missions and capabilities; at this point there is no intent to issue weapons. In response to Representative Saddler's request for clarity, he restated it is not the intent of the adjutant general to issue weapons; however, he said he could not say what an adjutant general may determine in the future.

REPRESENTATIVE SADDLER surmised HB 152 would provide the adjutant general authority to issue weapons to ASDF - should he/she deem it necessary - without further statutory authority.

MR. DOEHL advised currently there is no need for statutory authority should the adjutant general issue weapons.

REPRESENTATIVE SADDLER restated his request for an indeterminate fiscal note attached to HB 152 because if the adjutant general can issue weapons, the potential costs of the bill are not realistically reflected [by zero Fiscal Note Identifier: HB152-MVA-COM-03-10-17].

CHAIR TUCK questioned whether DMVA would be able to issue armories if the costs thereof were not in the budget.

MR. DOEHL said no. He pointed out neither of the aforementioned issues are germane to HB 152.

[2:44:51 PM](#)

REPRESENTATIVE RAUSCHER asked who wrote the bill.

CHAIR TUCK explained the bill originated from a combination of sources: The Department of Law, Representative Tuck's office, and Legislative Legal Services.

REPRESENTATIVE RAUSCHER directed attention to the bill on page 6, lines 4-14, which read [original punctuation provided]:

(a) To the extent funds are available, the adjutant general may authorize the payment of up to 100 percent of the cost of tuition and required fees for each active member of the Alaska National Guard, the Alaska State Defense Force, or the Alaska Naval Militia if

the member attends an educational, vocational, or technical training school in this state. The adjutant general may prioritize categories of education benefits to encourage recruitment and retention of Alaska National Guard, Alaska State Defense Force, or Alaska Naval Militia members. Payments authorized under this section for active members of the Alaska National Guard, the Alaska State Defense Force, or the Alaska Naval Militia continue so long as the active member is a student in good standing in the educational program or class and participates satisfactorily in unit training activities.

REPRESENTATIVE RAUSCHER opined the aforementioned section does not pertain to his understanding of the purpose of the bill.

CHAIR TUCK explained after House Bill 126 was passed last year, it was recognized that other related provisions of Alaska Statutes needed to be updated.

MR. DOEHL further explained holistic improvements to legislation are used to better achieve the goals of DMVA and the organized militia.

REPRESENTATIVE RAUSCHER asked how the bill provides for the transfer of authority back to the governor.

MR. DOEHL said there is no formal transfer of power from the governor to the adjutant general; at the time communications with the governor or the governor's successor are restored, power is automatically vested in the higher authority.

CHAIR TUCK, in further response, directed attention to the bill on page 1, lines 8-14 and continuing to page 2, lines 1-7, which read [in part]:

The governor's command is exercised through the adjutant general, who shall carry out the policies of the governor in military affairs. The adjutant general represents the governor and shall act in conformity with the governor's instructions. The adjutant general shall exercise control and command of the military department of the state. The adjutant general shall adopt regulations that provide for the organization, administration, and equipment of the organized militia that are not contrary to federal law or regulations [HAS COMMAND OF THE ALASKA NATIONAL

GUARD AND THE ALASKA NAVAL MILITIA WHILE THEY ARE NOT IN ACTIVE FEDERAL SERVICE. THE GOVERNOR MAY ADOPT NECESSARY REGULATIONS FOR THEM]. The Alaska National Guard and the Alaska Naval Militia and their members are subject to all federal laws and regulations relating to the National Guard and Naval Militia of the several states and territories and of the United States.

2:49:00 PM

REPRESENTATIVE LEDOUX returned discussion to the current authority of the adjutant general to provide guns and artillery.

MR. DOEHL restated there is currently no statutory prohibition on issuing guns to ASDF. He advised issuing artillery would be beyond any duties envisioned of ASDF.

REPRESENTATIVE LEDOUX, noting that the adjutant general can currently issue guns, questioned the rationale for an [indeterminate] fiscal note attached to HB 152.

MR. DOEHL said the bill would not have a fiscal impact.

2:50:26 PM

REPRESENTATIVE SADDLER remarked:

... My reading of this bill says that Section 11 clearly envisions facilitating issuance of small arms, I assume weaponry, to members of the organized militia ... [which] includes [the] National Guard, [the] Alaska Naval Militia, and the state defense force. Currently, the National Guard already has weaponry, I don't know about the naval militia, but I know that the Alaska State Defense Force does not now have weapons issued by the state whether new purchase or surplus gear. So, by lowering the barrier to align ASDF to not have to have an armory, this bill clearly envisions issuing weapons. ... We have heard ... the administration has sought to increase the staffing and mission including the armed mission of the quasi Eskimo scouts in Western Alaska, we had a request for \$210,000 to stand up the headquarters structure necessary for three battalions of about 75 people each. So, I think I can see ahead ... a desire and an intent to arm these folks.

REPRESENTATIVE SADDLER continued to Section 12, which he said authorizes the "attorney" general to prioritize educational training, tuition, and fees for members of the organized militia, for vocational, technical, and educational school to encourage recruitment and retention. He opined these are powers beyond the issue of the emergency delegation of power and are a significant policy change sought to increase the size, scope, cost, and risk of ASDF. He said he was "very uncomfortable about this."

[2:52:43 PM](#)

REPRESENTATIVE SPOHNHOLZ made a motion to call for the question on HB 152.

CHAIR TUCK asked Representative Spohnholz to temporarily delay her motion.

REPRESENTATIVE REINBOLD asked Mr. Doehl whether he helped write the bill.

MR. DOEHL said no.

REPRESENTATIVE REINBOLD asked for a list of states that "have actually done this type of legislation."

MR. DOEHL said his research on the authority of the adjutant general to place [militia] into state active duty included Wisconsin and Illinois; regarding his understanding of the regulatory authority, his research included California.

REPRESENTATIVE REINBOLD restated her request.

MR. DOEHL could not provide an "exhaustive list."

REPRESENTATIVE REINBOLD then asked for a few specific states.

MR. DOEHL said, "I believe at least, checking for consistency, Wisconsin, Illinois, California are consistent with the approaches we've delineated here. Also, on the emergency call of authority for disasters, I believe Texas is."

REPRESENTATIVE REINBOLD returned attention to the bill on page 5, [beginning on line 31 and continuing to page 6, lines 1-2] which read [in part]:

[PROCEEDS RECEIVED AS RENTAL OR OTHERWISE AT AN ARMORY FROM NONMILITARY USE SHALL BE DEPOSITED IN THE GENERAL FUND.]

REPRESENTATIVE REINBOLD asked why the aforementioned text would be deleted.

MR. DOEHL responded the [text] would be deleted because it is inconsistent with the [National Guard] Master Cooperative Agreement under which the federal government pays 50-100 percent of DMVA facilities' operating costs. The agreement requires DMVA to apply rents received to reduce operating costs paid by the federal government.

REPRESENTATIVE REINBOLD questioned whether DMVA is planning on selling an armory, and if so, where the proceeds would go.

2:57:17 PM

MR. DOEHL explained there are 53 excess armories; after divestiture, there is a disposal process. However, excess armories may be rented, as is referenced in the bill.

REPRESENTATIVE REINBOLD asked whether proceeds have previously been deposited into the general fund, and for an explanation of the change brought about by the bill.

MR. DOEHL acknowledged previous funds have gone to the general fund erroneously, which then had to be reimbursed to the federal government; the bill would comply with the rights and obligations of the Master Cooperative Agreement.

REPRESENTATIVE REINBOLD surmised the funds from a sale or "whatever" would now be given to the federal government.

MR. DOEHL said no; in fact, the bill does not address the selling of armories, but addresses the rental of a facility. Rental proceeds would be used on a pro rata basis to reduce the federal reimbursement that pays for facility maintenance.

REPRESENTATIVE SADDLER directed attention to [the bill on page 7, lines 1-5] which read:

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

Sec. 26.05.660. Delegation by the governor. The governor may delegate any authority vested in the governor under the code of military justice, and

provide for the subdelegation of the authority, except the powers given to the governor by AS 26.05.450 [AS 26.05.170 AND 26.05.450]

REPRESENTATIVE SADDLER questioned why the bill maintains the right of the governor to convene general courts-martial.

MR. DOEHL said that authority is retained by the governor because of its great significance.

REPRESENTATIVE SADDLER inquired as to whether questions about arming, training, regulations, and activation for state duty are less significant.

MR. DOEHL said no. He clarified that a singular act of a general court-martial is deemed of significant importance; however, ongoing decisions inherent to command "do not require the governor's attention." In further response to Representative Saddler about the importance of a general court-martial, he said a general court-martial is the equivalent of a felony trial and criminal court matter that could result in incarceration.

REPRESENTATIVE SADDLER repeated his concerns and stated his opposition to the bill.

[3:02:59 PM](#)

CHAIR TUCK announced that HB 152 was held over.

[3:03:10 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 3:03 p.m.