

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

January 23, 2018

3:02 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative DeLena Johnson
Representative Gary Knopp

MEMBERS ABSENT

Representative Andy Josephson (alternate)
Representative Chuck Kopp (alternate)

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	
03/30/17	(H)	Heard & Held	
03/30/17	(H)	MINUTE(MLV)	
04/04/17	(H)	MLV AT 1:00 PM GRUENBERG 120	
04/04/17	(H)	Moved CSHB 152(MLV) Out of Committee	
04/04/17	(H)	MINUTE(MLV)	

04/05/17 (H) MLV RPT CS (MLV) 3DP 2DNP 1NR
04/05/17 (H) DP: SPOHNHOLZ, PARISH, TUCK
04/05/17 (H) DNP: REINBOLD, SADDLER
04/05/17 (H) NR: LEDOUX
05/09/17 (H) STA AT 3:00 PM GRUENBERG 120
05/09/17 (H) Heard & Held
05/09/17 (H) MINUTE (STA)
01/23/18 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

KENDRA KLOSTER, Staff
Representative Chris Tuck
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSHB 152 (MLV), on behalf of Representative Tuck, prime sponsor.

BOB DOEHL, Deputy Commissioner
Office of the Commissioner/Adjutant General
Department of Military & Veterans' Affairs (DMVA)
Joint Base Elmendorf-Richardson (JBER), Alaska

POSITION STATEMENT: Testified in support of CSHB 152 (MLV) and answered questions during the hearing.

ACTION NARRATIVE

[3:02:41 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:02 p.m. Representatives Tuck, Wool, Birch, Johnson, Knopp, and Kreiss-Tomkins were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

[The committee took a brief at-ease at 3:03 p.m. to resolve sound system difficulties.]

[3:04:16 PM](#)

HB 152-ORGANIZED MILITIA; AK ST. DEFENSE FORCE

[3:04:16 PM](#)

CHAIR KREISS-TOMKINS announced that the only order of business would be CS FOR HOUSE BILL NO. 152 (MLV), "An Act relating to the

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

[3:05:16 PM](#)

REPRESENTATIVE TUCK, as prime sponsor of CSHB 152 (MLV, paraphrased from the sponsor statement, which read as follows [original punctuation provided]):

House Bill 152 would continue to modernize the military and veteran statutory authorities to ensure that the Alaska National Guard operates as a modern, efficient military force able to quickly respond to Alaska's citizens. This proposal updates the 1955 Alaska Military Code by providing statutory authorities that will bring Alaska's organized militia into the 21st Century and on par with other state National Guards.

House Bill 152 would clarify the Adjutant General has control and command of the organized militia. Currently, the Alaska Military Code grants the Adjutant General the authority to control the organized militia but does not lay responsibility of command at this position [sic]. Military command authority carries two functions; the legal authority over individuals which will provide the Adjutant General the ability to hire employees and carry out disciplinary actions; and the legal responsibility to carry out missions.

This proposal will also clarify that the Adjutant General is authorized to adopt regulations that are consistent with federal active duty regulations, state law, and the Governor's intent.

House Bill 152 would authorize the Adjutant General to order the organized militia into State Active Duty under emergency situations. The current Alaska Military Code only authorizes the Governor to call out the organized militia to active state service. As certain crises materialize, time and circumstances may be of the essence to save lives and property of Alaskans. If the Governor is unavailable or unreachable, this bill would allow the Adjutant General to order the organized militia into active state service. The Adjutant General would be required

to continue efforts to contact the Governor and reassess the situation at least 72 hours after the order was given.

House Bill 152 would also extend the tuition assistance program to include the Alaska State Defense Force. The tuition assistance program allows the Adjutant General to authorize payment for the cost of tuition and fees for educational, vocational, and technical training when funds are available. Currently, the tuition assistance program includes the Alaska National Guard and the Alaska Naval Militia. This proposal would add the Alaska State Defense Force, which will be another tool to help with recruitment and retention in the Alaska State Defense Force.

House Bill 152 is an important step to ensure our organized militia has the authority to operate efficiently and protect Alaskans.

REPRESENTATIVE TUCK pointed out that an amendment was added in the House Special Committee on Military and Veterans' Affairs and referred the committee to page 3, lines 21-22, which read, "The organized militia may not be used against or to mitigate a lawful activity".

REPRESENTATIVE BIRCH referred to written testimony [from Lawrence Wood and included in the committee packet], which offers a concern that the proposed legislation gives the adjutant general sole authority without civilian oversight to call troops to state active duty without the knowledge of the governor or the governor's replacement in times of emergency or non-emergency. He asked the sponsor to comment on that; he maintained that currently the governor is clearly the responsible party to provide that oversight, and the proposed legislation "dilutes" the relationship between the governor and the adjutant general.

[3:09:37 PM](#)

REPRESENTATIVE TUCK responded that the authority still lies with governor. In an emergency, if the governor is incapacitated or unavailable to give orders, the proposed legislation allows the adjutant general to take over. In non-emergency situations, the proposed legislation allows the adjutant general to perform personnel actions and approve retirement.

3:10:21 PM

REPRESENTATIVE LEDOUX asked how many other states give the adjutant general such authority to call up active troops.

REPRESENTATIVE TUCK deferred to representatives of the Department of Military & Veterans' Affairs (DMVA).

3:11:10 PM

REPRESENTATIVE WOOL asked about the role of the lieutenant governor in the event the governor was incapacitated. He asked if the lieutenant governor would assume the duties of the governor and become the person who could call up the Alaska National Guard.

REPRESENTATIVE TUCK expressed his understanding that if "something happens with the governor," the lieutenant governor automatically assumes command, and the adjutant general falls under his/her authority. The proposed legislation requires the adjutant general to continue to attempt to contact the governor and reassess his/her response within 72 hours of his/her initial response to the emergency.

3:12:01 PM

KENDRA KLOSTER, Staff, Representative Chris Tuck, Alaska State Legislature, on behalf of Representative Tuck, prime sponsor of CSHB 152(MLV), offered an example as explanation: Alaska experiences an earthquake like the Good Friday earthquake, and the governor is injured or unable to be located. For the Alaska National Guard to be called forth, a new governor must be sworn into office. The proposed legislation allows the adjutant general to call forth the militia in such a situation. She maintained that currently the circumstances in which the adjutant general may do so is limited. She added that page 3, lines 14-20, of CSHB 152(MLV) lists other requirements - continuous efforts to contact the governor and reassessment of the situation for troop deployment within 72 hours. She asserted that the intent is to have the adjutant general step in during a catastrophe so as not to lose time getting the service members out to help Alaskans.

REPRESENTATIVE WOOL asked if the lieutenant governor must be sworn in if the governor is incapacitated, as opposed to automatically taking over the powers of the governor.

MS. KLOSTER answered yes. She said that currently the governor is the only one who can call forth service members, except in the case of a wildfire, for which the adjutant general has that authority. The proposed legislation expands the adjutant general's authority to include earthquakes, flooding, and other natural disasters to save lives and prevent human suffering. Otherwise, another governor would need to be sworn in to call forth the Alaska National Guard.

[3:14:02 PM](#)

REPRESENTATIVE JOHNSON offered that she has grave concerns regarding the proposed legislation. She expressed that it goes against her sense of the chain of command. She stated that if there is a gap in Alaska's emergency management, it may be more appropriate to amend the statute addressing the emergency powers of the governor, [AS 26.20.040], or of the lieutenant governor, to keep the power to command the Alaska National Guard within the realm of an elected official. She maintained that she supports the views put forth in [Lawrence] Wood's written testimony. She relayed that Mr. Wood, on page 7 of his written testimony, cites the proposed subsection, AS 26.05.070(g), [page 3, lines 23-24, of CSHB 152(MLV)], and expressed his belief that the new subsection would conflict with federal precedent and law. She asked for the sponsor's response to Mr. Wood's comments.

[3:15:25 PM](#)

REPRESENTATIVE TUCK relayed that there are times when the President of the U.S. calls the U.S. National Guard into action, and there are times when the governor may do that. He maintained that the proposed legislation does not conflict with the President's ability to do so. The proposed legislation addresses natural disaster events, which are already addressed in statute, and it clarifies statute language. Other actions by the adjutant general are allowed if the governor is unavailable. In response to Mr. Wood, who wrote that the National Guard is a "thing of the federal government," Representative Tuck said, "Yes and no. There are times when the state actually calls in the National Guard."

[3:16:48 PM](#)

REPRESENTATIVE KNOPP referred to the expansion of the tuition assistance program to include the Alaska State Defense Force

(ASDF); he asked for the composition of the ASDF, and noting the zero-fiscal note, he asked how the program would be funded.

REPRESENTATIVE TUCK replied that the proposed legislation would provide insurance benefits to ASDF service members who are injured while in training.

REPRESENTATIVE KNOPP asked if legislation passed last year, [House Bill 126, introduced during the Twenty-Ninth Alaska State Legislature, 2015-2016, and signed into law 11/07/16], addressed that issue.

REPRESENTATIVE TUCK referred to Section 5 of CSHB 152(MLV), [page 4, lines 14-16], which read, "Members of the Alaska State Defense Force performing inactive duty or training or community service duties shall receive benefits under AS 26.05.260 if the member suffers an injury, disability, or death while in the line of duty." He stated that including this provision aligns the proposed legislation with the other Title 26 reform bills.

REPRESENTATIVE KNOPP referred to the 4/12/17 letter addressed to Representative Tuck from DMVA, page 1, first paragraph, number 1, which read, "The Adjutant General (TAG) commands and controls the organized militia, under the direction of the Governor as Commander-in-Chief, who maintains civilian oversight." He relayed that the proposed legislation appears to give up all oversight, especially for adopting regulations.

REPRESENTATIVE TUCK responded that the Alaska Code of Military Justice (ACMJ) reform, passed two years ago, allows DMVA to adopt regulations. The proposed legislation, which is the fourth in a series of five, is to ensure that the entire Title 26 conforms internally; it cleans up language; and much of the regulation authority already has been given to ACMJ.

[3:20:19 PM](#)

REPRESENTATIVE LEDOUX asked if there is no procedure allowing the lieutenant governor to take temporary control without being sworn in. She referred to the governor's surgery about a year ago, in which he was under general anesthetic; she said she is surprised there is no procedure for temporary control without a swearing-in ceremony.

[3:21:33 PM](#)

BOB DOEHL, Deputy Commissioner, Office of the Commissioner/Adjutant General, Department of Military & Veterans' Affairs (DMVA), relayed that DMVA strongly supports the proposed legislation. In response to Representative Birch, he explained that giving the adjutant general the authority to call the militia to state active duty without the governor's knowledge is limited by Section 3 of CSHB 152(MLV), [page 3], to emergencies where delay in contacting the governor could lead to loss of life. After a disaster there is a response time but no law enforcement; it is only to save Alaskans that these provisions are used.

MR. DOEHL stated that [this morning] at about 12:35 a.m., Major General Laurie Hummel [Commissioner/Adjutant General, DMVA] called Governor [Bill] Walker; she was able to reach him because he was in Seattle between flights. If he still had been on his flight from Washington, D.C., there might have been a period of hours before he could have been reached. During that time, the Alaska National Guard could not have been deployed to rescue people had the tsunami [from the magnitude 7.9 earthquake in the Gulf of Alaska at 12:31 a.m. that morning] been problematic rather than a small wave. He maintained that the objective for the proposed legislation is to be able to take advantage of the "golden hour," when the Alaska National Guard can be most effective in saving Alaskans.

MR. DOEHL conceded that there is an important system of "checks and balances" that must be in place before deploying military force. He asserted that the adjutant general is an at-will employee of the governor and can be relieved at any time if there is a loss of trust and confidence. He maintained that the governor retains ultimate accountability for that position. He said that in selecting an adjutant general, the governor has determined that this is the person who represents his/her interests, and the governor is responsible for the actions of his subordinates. He summarized by saying an emergency response would only be initiated without the governor's knowledge to save lives.

MR. DOEHL responded to Representative LeDoux's question [about other states' delegation of authority] by saying that he is not aware of any state that does not give the adjutant general the authority to direct the deployment the national guard in an emergency. In response to Representative Wool's question regarding the lieutenant governor's role in assuming authority, he explained that in the event of a known temporary unavailability, such as the governor going under anesthesia,

there is a procedure in place for a temporary delegation [of authority]. He said that the challenge in Alaska is that one cannot plan for earthquakes and tsunamis ahead of time, and the governor may be on an airplane flight or in a pile of rubble.

[3:25:42 PM](#)

MR. DOEHL addressed Representative Johnson's comment regarding emergency powers by saying that an elected official always retains responsibility for what his/her subordinates do. The installation commander of Alaska's active duty forces has the authority to send forces off base for up to 72 hours without contacting anyone up the chain-of command to help Alaskans in need. He stated that federal precedent and federal law dictate that authority may be delegated eight to ten levels down from the President of the U.S. all the way to the commander of the Air Base Wing at Joint Base Elmendorf-Richardson (JBER); the concern in this instance would be to save lives; and ultimately the officer would be held accountable afterwards if he/she makes a bad call.

MR. DOEHL relayed that the Alaska Army National Guard (AK ARNG) is under the command and control of the governor, not the federal government, unless it is specifically mobilized under Title 10 of the U.S. Code authorities. He maintained that Mr. Wood is wrong in that regard. The governor is the commander and chief of AK ARNG, unless mobilized [under Title 10], which usually involves the forces going overseas.

MR. DOEHL, in response to Representative Knopp's question regarding tuition assistance, reported the following: The number of active ASDF members has increased from about 70 to about 120 in the past two years; during that time, the average age of members has decreased 20 years; the percentage who are veterans has increased by 50 percent. Under the tuition assistance program, a certain amount is allocated to the University of Alaska (UA), that amount is capped, no more is allocated even if additional guardsmen sign up; and there is about 88 percent execution on the fund. The intent in CSHB 152(MLV) is to allow ASDF soldiers to apply for the funds, as certified by the adjutant general, and compete with the Alaska National Guard members for the funds. Because there is a set amount allocated, there would be no growth in the cost of the program. He suggested that offering this program constitutes a useful recruitment and retention tool, especially in attracting younger members.

[3:28:18 PM](#)

MR. DOEHL, in addressing concerns about the governor's lack of oversight, emphasized that the governor always retains the authority to overrule any regulation or terminate the adjutant general; he explained that the word "regulation" in the statute refers to internal personnel policy of the organization. He reiterated that the governor retains ultimate oversight.

[3:28:59 PM](#)

REPRESENTATIVE LEDOUX referred to MR. Doehl's comment that there is no procedure for temporary delegation of authority if not done in advance. She asked why the governor could not outline in a letter the circumstances under which the lieutenant governor should assume authority.

MR. DOEHL relayed that "succession" procedures are outside of Title 26, but he believes it is all "spelled out" in statute. He said that in a disaster such as Puerto Rico experienced with Hurricane Maria [9/20/17], in which communications were destroyed throughout the whole island, it is possible that the governor and the lieutenant governor both would be unavailable. He asked, "At that point, do we want to curtail the adjutant general from being able to launch the fire department or search and rescue (SAR) forces or even folks to help with general relief?"

REPRESENTATIVE LEDOUX asked if Puerto Rico has a similar statute to that proposed under CSHB 152(MLV), and if it has a national guard.

MR. DOEHL said that the Puerto Rico national guard was involved [in the response]. Since hurricanes can be predicted, the guard can be put into active duty in advance, therefore, allowing for better planning.

[3:30:55 PM](#)

REPRESENTATIVE WOOL asked for confirmation that the transfer of authority to the adjutant general is only for emergencies, natural disasters, and humanitarian missions.

MR. DOEHL agreed and mentioned that the conditions [for transfer of authority] under CSHB 152(MLV) are relayed in Section 3 on page 3 of the proposed legislation.

REPRESENTATIVE WOOL referred to Mr. Doehl's testimony regarding the tsunami warning, the governor's availability, and the golden hour. He asked if 72 hours would be too long. He offered that three days of not being able to reach the governor is a long time.

MR. DOEHL replied that the 72 hours mirrors the federal requirements of how long a base commander can provide forces in immediate response authority; the exceptions are a widespread mass disaster, at which time it may take time to reach competent authority, and a massively compromised communication system, at which time establishing a communication link from the governor to the forces may take time. He stated that he defers to the wisdom that went into the federal guidelines for what is an accepted standard.

[3:32:42 PM](#)

CHAIR KREISS-TOMKINS asked for clarification that every year there is a "pot of money" available for tuition assistance; however, this year that pot of money was not fully expended. If more people participate in the program, there is no way the cost will exceed the allotted amount, but there will be greater utilization of the funds.

MR. DOEHL responded, that is correct. He added that there have been years in the past in which the funds have been fully expended.

CHAIR KREISS-TOMKINS asked how much money is available for tuition assistance under the program.

MR. DOEHL replied that it is in the hundreds of thousands of dollars but did not know the exact amount.

[3:33:47 PM](#)

REPRESENTATIVE WOOL asked for confirmation that the transfer of authority does not apply to events of war, invasion, or riot, since they are not natural disasters.

MR. DOEHL replied that a riot is a law enforcement situation. In that case the governor has the legal authority to order the Alaska National Guard into state active duty to maintain law and order; that being a law enforcement function, the adjutant general does not have that authority.

[3:35:23 PM](#)

REPRESENTATIVE TUCK reiterated that the proposed legislation is just one of many to update Title 26; the AMCJ was written in 1955 with no significant changes until two years ago; other states have already adopted many of the provisions in CSHB 152(MLV). He said that the intent is to arrange Title 26 logically. As an example, the authority to write regulations was already in Title 26, but under the proposed legislation, would be moved to a more appropriate section. He relayed that the proposed legislation gives the adjutant general "hire and fire authority" under his/her own department. He maintained that CSHB 152(MLV) would update Title 26 to include all the different divisions of DMVA. The additional provision under CSHB 152(MLV) is the authority of the adjutant general in an emergency disaster. He said that Section 2 of CSHB 152(MLV) on page 2, beginning on line 8, describes the governor's role; Section 3 of CSHB 152(MLV) on page 3, beginning on line 2, describes the adjutant general's role and the conditions under which the adjutant general has authority; and authority is expanded from wildland fire only to include other natural catastrophes.

CHAIR KREISS-TOMKINS asked that the committee receive information as to whether Alaska is the last state to adopt language like proposed in CSHB 152(MLV).

[HB 152 was held.]

[3:38:03 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 3:38 p.m.