

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

January 25, 2018

3:13 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
01/23/18	(H)	Heard & Held
01/23/18	(H)	MINUTE (STA)
01/25/18	(H)	STA AT 3:00 PM GRUENBERG 120

**WITNESS REGISTER**

BOB DOEHL, Deputy Commissioner  
Office of the Commissioner/Adjutant General  
Department of Military & Veterans' Affairs (DMVA)  
Joint Base Elmendorf-Richardson (JBER), Alaska  
**POSITION STATEMENT:** Answered questions during the hearing on  
CSHB 152 (MLV).

CHRISTOPHER WEAVER, Lieutenant Colonel, Judge Advocate  
Alaska National Guard Joint Staff  
Joint Base Elmendorf-Richardson (JBER), Alaska  
**POSITION STATEMENT:** Answered questions during the hearing on  
CSHB 152 (MLV).

**ACTION NARRATIVE**

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**CHAIR JONATHAN KREISS-TOMKINS** called the House State Affairs Standing Committee meeting to order at 3:13 p.m. Representatives LeDoux, Wool, Birch, Johnson, Knopp, and Kreiss-Tomkins were present at the call to order. Representative Tuck arrived as the meeting was in progress.

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

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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."

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CHAIR KREISS-TOMKINS opened public testimony on CSHB 152(MLV). After ascertaining that there was no one who wished to testify, he closed public testimony.

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REPRESENTATIVE BIRCH asked for information on "organized militia": the origin of the term; its use in the context of CSHB 152(MLV); and its relationship to the Alaska National Guard.

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BOB DOEHL, Deputy Commissioner, Office of the Commissioner/Adjutant General, Department of Military & Veterans' Affairs (DMVA), relayed that by statute, the Alaska organized militia is defined as the members who have volunteered to serve in the following organizations: the Alaska Air National Guard (AK ANG); the Alaska Army National Guard (AK ARNG); the Alaska Naval Militia (AKNM); and the Alaska State Defense Force (ASDF). He said that Alaska also has an unorganized militia, which consists of all able-bodied individuals over 18 years of age and up to a specified age, who can be conscripted to serve in a dire emergency.

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MR. DOEHL stated that in answer to the question - "Who can call forth the national guard?" - the typical incident is not the mega earthquake, but the lost child adjacent to a city. The goal is to get a vehicle out before losing daylight to help the child; in that instance, time is of the essence.

MR. DOEHL restated the question from Representative LeDoux during the 1/23/18 House State Affairs Standing Committee meeting as follows: "Can the governor issue a standing delegation to the lieutenant governor whenever he is incapacitated, in order to call out the national guard?" In answer to that question, Mr. Doehl relayed the following statement:

The governor can delegate functions to the lieutenant governor under Article III, Section 7, of the [Alaska State] Constitution. A permanent delegation of authority may raise concerns with Article III, Section

19, as that section gives the governor the specific military authority as commander and chief of the state's armed forces. Furthermore, the outer limits of the governor's delegation of authority is a complex question that would require substantial time to address.

It is also worth pointing out that Article III, Section 9, of the constitution provides if the governor is temporarily absent from office, the lieutenant governor serves as the acting governor. So, in that event, the lieutenant governor would be able to call up the guard in his or her acting capacity. Now, the department notes that there is no statute that specifically addresses that scope of a standing delegation or authority.

If we look to our national model as an example of the federal military, the chain of command flows. In terms of who can direct military action if the President is unavailable, it is not the Vice President, it is the combatant commander that can direct ... at least until the Vice President swears or oaths in. So, if the President is in a place that gets hit with a nuclear bomb, and he is unfortunately unavailable, the combatant commander would direct the military response until the Vice President took the oath of office.

REPRESENTATIVE LEDOUX asked for a definition of "combatant commander."

MR. DOEHL replied that the combatant commander is the four-star general in charge of the responding military force.

REPRESENTATIVE LEDOUX asked if that person would have the nuclear code.

MR. DOEHL responded that the state does not have nuclear weapons, and the issue is outside his purview; however, his understanding is that there is a means to address that situation.

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REPRESENTATIVE WOOL commented that Alaska is not mirroring federal law. He expressed that he was unaware that if the

President is killed with a bomb, the Vice President, who is the second in command, would have to be sworn into office before he/she could authorize military force; and until that happened, a four- or five-star general would have that authority. He asked if his understanding of Mr. Doehl's testimony was correct: if the governor is incapacitated, the Lieutenant Governor is automatically in charge without being sworn into office.

MR. DOEHL maintained that the question posed is undefined and a difficult one under state constitutional law; after two days of research, the Department of Law (DOL) has not been able to provide a clear answer.

REPRESENTATIVE WOOL asserted that the determination of whether elected leaders or the military is in charge in these situations should be made before an emergency or catastrophe happens. Consulting the military and consulting civilian authority may elicit two different responses.

MR. DOEHL responded that the civilian authority always remains in charge and responsible. The civilian authority may not be the one to say "go send the High Mobility Multipurpose Wheeled Vehicle ("Humvee") to save that child; however, it is responsible for how that action is executed, its timeliness, its success, and other consequences. He said that the civilian authority may act quickly to make corrections if there is a loss of trust and confidence in the military officer who directed the lifesaving activity or failed to direct the lifesaving activity, because military officers are virtually at-will employees. He emphasized that the response addressed in the proposed legislation is limited to lifesaving situations and does not apply to actions against Alaskans.

REPRESENTATIVE WOOL asked for information on the number of states with similar provisions [offered by CSHB 152(MLV)]. He referred to Mr. Doehl's testimony during the 1/23/18 House State Affairs Standing Committee meeting, in which Mr. Doehl specified that the 72-hour timeframe [for immediate response authority] mirrors the federal government's timeframe for a base commander in a similar situation. He asked if other states giving immediate response authority to the adjutant general (TAG) also use the 72-hour timeframe or a different timeframe.

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CHRISTOPHER WEAVER, Lieutenant Colonel, Judge Advocate, Alaska National Guard Joint Staff, testified that he does not know how

many states have statutes [regarding the authority of the adjutant general] codified like proposed in CSHB 152(MLV); it varies from state to state. He offered that some rely on the Department of Defense (DoD) Directive 3025.1A; and some give general authority to the governor to delegate authority to TAG. He said that currently in Alaska Statutes, there is a restriction on TAG's use of immediate response authority. He maintained that he cannot provide the number of states with similar provisions as in CSHB 152(MLV), but he can give anecdotal information based on discussions with other (indisc.) and a quick review of some of the (state) statutes that he has reviewed.

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REPRESENTATIVE JOHNSON expressed her belief that the proposed legislation has constitutional issues. She stated that 44 states have a line of succession "that runs five-plus deep." There are four states without such a line of succession - Alaska being one - in which the governor appoints his/her own line of succession. This just occurred recently in Alaska when Governor [Bill] Walker appointed Valerie Davidson [Commissioner, Department of Health and Social Services (DHSS)] to be the successor to the lieutenant governor. She maintained that the reason Alaska doesn't have a long line of succession is because it is up to the governor to appoint successors.

REPRESENTATIVE JOHNSON cited Article III, Section 9, of the Alaska State Constitution, which read, "In case of the temporary absence of the governor from office, the lieutenant governor shall serve as acting governor." She pointed out that there is no mention of swearing in the lieutenant governor. She relayed that other states are specific about what constitutes the governor being incapacitated. She maintained that Alaska's reference to "temporary absence" is broad, and because there is no mention of swearing in a new governor, there is no lapse in leadership. She asserted that having civilian authority for the national guard is a fundamental piece of American government and is the intent of the Alaska State Constitution.

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REPRESENTATIVE KNOPP asked if the organized militia consists of private citizens who are volunteers, not enrolled service members or national guard members.

MR. DOEHL replied that the Alaska organized militia consists of AK ARNG, AK ANG, ASDF, and AKNM. The members have taken a deliberate action to take an oath to serve the state.

REPRESENTATIVE KNOPP said he intended his question to be regarding the composition of the ASDF.

MR. DOEHL answered that ASDF is part of Alaska organized militia.

REPRESENTATIVE KNOPP expressed his understanding that the members of the ASDF are not active military members, but volunteers.

MR. DOEHL replied that all members of the Alaska National Guard have both a state and federal military affiliation; ASDF has only a state military affiliation but is part of the militia - or state military force; they are recognized as such by the U.S. Constitution in 32 U.S. Code § 109.

REPRESENTATIVE KNOPP referred to Section 1 of CSHB 152(MLV), [page 1, line 5], which read, "Control and command of the organized militia" and pointed out the proposed deletion of the phrase, "Alaska National Guard and Alaska Naval Militia", on line 6 of page 1. He maintained that the proposed legislation would take all control and authority away from the governor and give it to TAG except for authority over ASDF.

MR. DOEHL answered that the interpretation of DMVA is that under the proposed legislation, the governor retains control of the Alaska organized militia, which includes AK ARNG, AK ANG, AKNM, and ASDF. The proposal under CSHB 152(MLV) substitutes all-inclusive language, "organized militia," for the Alaska National Guard and AKNM to clean up the Title 26 references to ASDF.

REPRESENTATIVE LEDOUX referred to the example of the lost child and asked how many people TAG currently has under her command without calling up any additional people.

MR. DOEHL replied that currently Alaska has about 4,100 people in the Alaska organized militia.

REPRESENTATIVE LEDOUX asked if currently TAG could independently call up 4,100 people for a response even without CSHB 152(MLV) becoming law.

MR. DOEHL relayed that before TAG can call up anyone, there must be a request from a civilian authority to do so; she cannot independently send the militia soldiers out. She remains fully accountable and answerable to the governor of the State of Alaska - the commander in chief. He corrected himself to say that if there is a wildland fire that required 4,100 guardsmen, ASDF, and AKNM members, TAG currently has the authority to call them up to fight the fire. He reiterated that she is answerable to the governor and to Alaskans as to why she did it.

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REPRESENTATIVE LEDOUX asked about TAG's authority to call up the organized militia for a lost child.

MR. DOEHL replied that for a lost child, TAG could not call up a single person; for any other situation other than a wildland fire, TAG is required to first call the governor.

REPRESENTATIVE LEDOUX suggested that if TAG receives information about a lost child, she calls the governor.

MR. DOEHL stated, "That is incorrect." He reiterated that she can only call the governor when there is a request from competent civil authority - most likely the Alaska State Troopers (AST) in a rural area or the mayor in a municipality. A mayor might ask for assistance because of the militia's unique capability. He maintained that the Alaska organized militia does not self-deploy.

REPRESENTATIVE LEDOUX asked about the procedures involved when TAG calls the governor at the request of civil authority and the governor is gone. She asked, "Does she get patched through directly to the lieutenant governor?"

MR. DOEHL speculated that the first attempt is a direct call between TAG and the governor; after that, TAG could contact the executive staff for assistance; if that fails, an attempt could be made to contact the lieutenant governor's staff. He emphasized that there is a process involved, and time is valuable when losing sunlight and a child is in need.

REPRESENTATIVE LEDOUX maintained that when the governor is incommunicado for any reason, there must be a procedure within the governor's office for patching someone, like TAG, through to the lieutenant governor or someone in the direct line of authority.

MR. DOEHL replied that given enough time, TAG can always reach the lieutenant governor if the governor is unavailable. He maintained that the challenge is: when time is of the essence, and it takes time to locate and attempt contact with the governor and the lieutenant governor, that time adds up. He stated that municipalities expect law enforcement to respond in three to five minutes; it would take that long just to make the phone calls to attempt contact with the governor and lieutenant governor.

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REPRESENTATIVE LEDOUX asked whether the governor's office has a procedure for transferring an emergency call to the appropriate person when the governor is unavailable.

MR. DOEHL said that even with such a transfer, there is still a time factor; there is no instant communication. The intent of the proposed legislation is to reduce the time to provide a more meaningful and effective response.

REPRESENTATIVE JOHNSON offered that the governor does have an emergency protocol. She asked for the number of states that have provisions like in the proposed legislation. She maintained that her staff, after doing research, was unable to identify any such states. She maintained that other states have very "deep" lines of succession, which Alaska does not have. She suggested that the governor could designate TAG for authority without putting it into statute.

MR. DOEHL answered that Lieutenant Colonel Weaver examined the issue and found that other states may make such a designation of TAG; however, he could not find another state with the specific statutory language delegating authority only for wildland fires as does Alaska's statute. He said that Alaska's statute is written in such a way that it appears to limit to wildland fires the circumstances for which the governor may delegate authority; no other state has that limitation; and it is for this reason a statutory revision has been proposed.

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REPRESENTATIVE JOHNSON maintained that her staff polled five states and learned that none gave TAG authority like proposed in CSHB 152(MLV). They did not poll states with extensive lines of

succession. She asked for confirmation that the statutes, as written, are limiting.

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REPRESENTATIVE TUCK referred to the discussion of the disaster relief fund (DRF) during the Finance Subcommittee for House Military & Veterans' Affairs meeting of 1/25/18; the fund is for relief and recovery actions in response to incidents such as storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, avalanche, snowstorm, prolonged extreme cold, drought, fire, flood, epidemic, explosion, or [riot] - most of which are natural disasters. He maintained that using the term "natural disasters" in the proposed legislation appropriately encompasses these incidents.

MR. DOEHL referred to page 2, lines 26-30, to point out the language that would be deleted from AS 26.05.070 under CSHB 152(MLV). It read, "In the event of wildland fire, the governor may delegate to the adjutant general the governor's authority under this section to order some or all of the organized militia into active state service to fight wildland fire." He maintained that it is this language which limits the governor's authority to delegate to TAG the ability to call forth the organized militia when needed for an emergency.

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REPRESENTATIVE KNOPP suggested that TAG having one line of delegated authority is very odd; he maintained that there must be additional authority delegated to TAG somewhere in statute.

MR. DOEHL replied that if there was more than that one line of delegated authority, the proposed legislation would be unnecessary. He maintained that it is the 64-year-old statute that "brings us to this precipice." He maintained that situations have come up in which DOL attorneys and the Alaska National Guard have identified that the specificity of this section of statute limits the authority of the governor to delegate to TAG the ability to utilize the Alaska organized militia for other emergency situations as requested by local civilian authorities.

CHAIR KREISS-TOMKINS asked for confirmation that every time in the last 64 years in which local SAR or competent civil authority has requested help to find the "hypothetical lost

child" there has been a call from that competent local civil authority to TAG asking for help, and TAG has in turn called the governor for permission to deploy Alaska militia assets to assist in the SAR effort.

MR. DOEHL replied that in every case, competent civil authority has made the request for military assistance: sometimes TAG is called; sometimes the governor is called directly by mayors; and sometimes a mayor or his/her staff requests the State Emergency Operations Center (SEOC) [DMVA] to contact TAG. When the request is made, the governor may ask TAG for assistance, or DMVA may request of the governor the authority to assist, after it determines it has the capability to do so. He confirmed for Representative Kreiss-Tomkins that the answer to the question is effectively "yes"; the calls vary; but ultimately a high-ranking person in the State of Alaska is contacted.

CHAIR KREISS-TOMKINS asked how many such requests occur per year.

MR. DOEHL responded that he does not monitor the occurrences but would provide that information. He offered an estimate that it occurs more than once and less than ten times per year.

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REPRESENTATIVE LEDOUX asked for the number of times in the past 60 years that TAG has been unable to contact the governor immediately, and the length of time it took for TAG to contact an executive authority who could authorize military action.

MR. DOEHL replied that under statute, only the governor has the authority to serve as commander in chief, and that is the reason for the proposed legislation. He stated that he cannot provide the number of instances in which immediate contact was not possible, but he mentioned that the Alaska National Guard now has more capacity to assist. The ASDF and AKNM did not exist in 1955, and since the Alaska National Guard didn't have the capability for immediate response back in the early '50s, a response was slower and more deliberate.

REPRESENTATIVE LEDOUX referred to the Kent State massacre ("Kent State") [in 5/4/70], in which the governor of Ohio called forth the Ohio National Guard. She asked if under CSHB 152(MLV), TAG would be able to send troops onto a university campus without the consent of civil authority if the governor could not be reached immediately.

MR. DOEHL answered no. He relayed that because of the concern regarding actions against other Alaskans rather than saving Alaskans, the proposed legislation specifically excludes law enforcement and response to civil disobedience from the authority of TAG for activating the organized militia. He stated that the underlying belief is that because of the significance of impacting Alaskans' rights, only the commander in chief should make that call. If the governor is unavailable, the college police are on their own until the governor is available.

REPRESENTATIVE LEDOUX suggested that there may not be a clear distinction between saving Alaskans and law enforcement; if the militia was looking for a child who had been kidnapped, it would be looking for the kidnapper as well.

MR. DOEHL responded that the Posse Comitatus Act [of 1878, limiting the powers of the federal government in using federal military personnel to enforce domestic policies within the United States] was enacted in response to federal military forces being used to maintain law and order in the [former] Confederate States of America after the Civil War. He added that there is an ample body of law that parses out the distinction. He offered his understanding: the organized militia, including the Alaska National Guard and the ASDF, could be called forth for a law enforcement purpose to locate kidnappers if a child was involved; however, the authority to activate the militia would have to come from the governor. It would leave the child at risk but represents the balance between saving Alaskans and saving Alaskans' rights.

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CHAIR KREISS-TOMKINS summed up by saying, "Lost child, the authority exists. Lost child kidnapped by bad guys, the authority does not exist."

MR. DOEHL replied that under CSHB 152(MLV), "that's correct for the adjutant general"; currently, direction from the governor would be required.

REPRESENTATIVE JOHNSON maintained that in the case of a lost child and a missing governor, Alaska has troopers, emergency services, and SAR groups. She offered that her understanding of calling forth the Alaska National Guard is that it is in relation to a disaster declaration. She said, "I don't know

what problem we're trying to fix here." She stated that Alaska's executive branch has a clear line of succession, and there is a booklet of protocols that the governor follows when calling forth the Alaska National Guard for catastrophic events. She asserted that just because the Alaska Military Code of Justice (AMCJ) is old, that doesn't mean it is not constitutionally correct; it has been working; and the proposed legislation does not address the problem Alaska has with the Alaska National Guard. She maintained that she was expecting the proposed legislation to allow for more civilian control, and she is concerned that it instead gives the military authority without the governor's direction.

MR. DOEHL responded that when the military responds, the civilian authority - the incident commander - remains in charge; that would be the chief of police, the Alaska State Trooper (AST), or the detachment commander. He said that the civilian authority retains responsibility and ultimate authority over the military action; it has the authority to call the troops back or limit their response. He stated that he fully agrees that there are fantastic SAR groups; however, when a situation exceeds their capabilities and equipment, the civilian authority may request the assistance of Alaska National Guard entities under the direction of the civilian incident commander, to fill a need for special military equipment, such as night vision goggles.

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REPRESENTATIVE JOHNSON conceded that a national guard response is at times appropriate and invaluable. She asked if there have been any incidents involving lost children for which the Alaska National Guard could not be mobilized.

MR. DOEHL responded that he is not aware of such a situation in Alaska, although he has been aware of the national guard being mobilized in other states under TAG's authority without contacting the governor.

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REPRESENTATIVE WOOL pointed out the distinction between a natural disaster and a lost child situation. He asked whether an event which involves only a lost child would be included under the conditions allowing TAG authority under CSHB 152(MLV) or be addressed by local authorities and AST. He also asked for more clarity regarding the lieutenant governor assuming authority as next in line to the governor.

MR. DOEHL referred to Section 3(b) of CSHB 152(MLV), on page 3, lines 3-9, which read in part, "under imminently serious conditions where time or circumstance does not permit approval from the governor". He maintained that this language encompasses disasters smaller than a tsunami or an earthquake; therefore, would apply to one Alaskan at risk.

REPRESENTATIVE WOOL asked if the language on page 3, line 4, "under imminently serious conditions", could refer to a lost child.

MR. DOEHL referred to language on page 3, line 8, which read, "to save lives, prevent human suffering" and maintained that it encompasses the situation of the lost child.

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REPRESENTATIVE TUCK pointed out that "imminently serious conditions" could include the release of hazardous substances, enemy or terrorist attack, and outbreak of a disease. He emphasized that in emergency situations when the governor is not available, quick actions must be taken; the choice is to allow TAG to act to save lives and prevent human suffering or to go through the succession process - resulting in a delay that could endanger people. He stressed that giving TAG this authority would be only in limited situations.

REPRESENTATIVE TUCK referred to Section 1 of CSHB 152(MLV), [page 1, lines 9-11], to point out the clear role of TAG under the proposed legislation. It read, "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." Representative Tuck added that TAG's actions are subject to review, and according to Section 3(e), [page 3, lines 16-20], TAG must continually try to contact the governor and reevaluate the response within 72 hours of ordering the organized militia into action.

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REPRESENTATIVE KNOPP asked if the active military, such as at Eielson Air Force Base (EAFB) and JBER, are a resource that can be utilized by Alaska. He requested information on who deploys them and under what conditions are they deployed. He mentioned that he has seen military helicopters taking people off [Denali Mountain].

MR. DOEHL explained the process of the Defense Support of Civil Authorities (DSCA) as follows: when requested by civilian authority, the federal military commander can authorize the use of the military forces under his/her command to assist the civilian authorities for up to 72 hours under immediate response authority. He said that in the case of helicopters taking people off [Denali Mountain], AK ANG has been "federalized" to perform those missions under the federal authority of the active U.S. Air Force through a standing memorandum of agreement (MOA). He relayed that the active U.S. Air Force is responsible for aviation SAR in the State of Alaska, and it accomplishes that through an agreement with AK ANG. He stated that the missions are requested by competent civilian authority; in the event of a [Denali Mountain] rescue, the civilian authority is usually the Denali National Park and Preserve personnel if federal land is involved or AST if other than federal land.

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REPRESENTATIVE LEDOUX referred to Section 2 of CSHB 152 (MLV), page 2, lines [11-12], which read, "if a mob or body of men act together by force with intent to commit a felony". She suggested that the language indicates that the Alaska National Guard does have authority with respect to law enforcement.

REPRESENTATIVE TUCK responded by saying that Section 2 of the proposed legislation refers to the governor's authority, and not TAG's authority. He confirmed that the governor would have the authority to activate the organized militia under the conditions stated in Section 2.

REPRESENTATIVE LEDOUX referred to Section 2, [page 2, line 19-20], which read, "Whenever any portion of the militia is ordered into active state service by the governor, it becomes an additional police force".

CHAIR KREISS-TOMKINS asked for clarification that the scenario described on lines 19-20 would not change under CSHB 152 (MLV).

MR. DOEHL confirmed that Section 2 relays the authorities that currently exist for the governor; they are the federal equivalent of martial law. Section 3 of CSHB 152 (MLV), [page 3, lines 3-29], relays TAG authorities. The Alaska National Guard can be used for law enforcement and stopping riots and insurrections at the direction of the governor; TAG may not do so, even under the proposed legislation.

CHAIR KREISS-TOMKINS asked for confirmation that the Kent State scenario could happen in Alaska with or without CSHB 152 (MLV) being enacted; the proposed legislation would have no effect on deployment of troops in that situation.

MR. DOEHL responded, that's correct. He added that only the governor can deploy the Alaska National Guard in that situation.

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REPRESENTATIVE WOOL referred to Section 3(b) on page 3, lines 3-9, which read in part, "In the event of wildland fire, earthquake, flooding, or other natural catastrophe, or under imminently serious conditions ... to save lives, prevent human suffering, or mitigate great property damage in the state", and conceded that it makes sense to provide for rapid response in these situations, if the governor is unavailable. He said that Representative Tuck mentioned "terrorist attack," and offered that a terrorist attack is not a natural disaster. He said that he is concerned that TAG would be permitted to deploy the Alaska National Guard if there was a terrorist attack; TAG could have that authority for 72 hours; and he said he is unsure what the response might entail. He asked for comment on that scenario.

MR. DOEHL answered that the Alaska National Guard could be deployed for a terrorist attack under "consequence management"; if a building is reduced to rubble, the Alaska National Guard could be utilized to extract victims. Currently only the governor can deploy troops to respond to criminal activity; therefore, the Alaska National Guard cannot engage the terrorists directly. The proposed legislation would give TAG the authority to deploy guardsmen to help Alaskans with the consequences of a terrorist attack.

REPRESENTATIVE WOOL asked if TAG would have authority to shut down an airport or port or to establish a perimeter around either and put it on lockdown as a defensive action.

MR. DOEHL responded that he did not believe TAG would have that authority; the reason for posting security people is to interact with the public to direct a certain activity or conduct. When the military is called in to direct an activity or conduct, it falls under the authority of the governor and not delegable under the proposed legislation.

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CHAIR KREISS-TOMKINS summarized: if a building collapses, TAG has the authority to deploy the organized militia to save lives; if a building collapses and there are terrorists at-large, TAG does not have authority to deploy the organized militia; only the governor has the authority to set up a perimeter, not TAG.

MR. DOEHL replied that there is one caveat: once the civilian authority called for and set up a perimeter, the Alaska National Guard or the ASDF could carry out the rescue activity; the law enforcement role is limited to the civilian authority, while the military provides other unique abilities to assist.

REPRESENTATIVE LEDOUX noted that the powers described in Section 3(b) are broad; however, they are limited by Section 3(c) on page 3, which read in part, "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." She expressed her understanding that subsection (c) is why the militia could not be called forth for a situation like Kent State.

MR. DOEHL responded, that is correct. He added that under Section 3(b), the militia also could not establish a security perimeter as described by Representative Wool. He reiterated that Section 2 on page 2 states who may [deploy the militia] for those actions; Section 3 on page 3 states that TAG cannot deploy the militia for those actions.

REPRESENTATIVE LEDOUX asked why Section 3(f) on page 3 of CSHB 152(MLV) is necessary. It read, "The organized militia may not be used against or to mitigate a lawful activity, including an organized labor activity." She suggested that instead, the language in Section 3 should state that TAG cannot deploy the militia for anything having to do with policing. She said that she does not interpret the phrase "regulatory, prescriptive, proscriptive, or compulsory" as "law enforcement." She maintained that she is not sure that Section 3 excludes law enforcement activity by the militia under the authority of TAG.

MR. DOEHL replied that Section 3(f) limits both the governor and TAG in using the Alaska organized militia to interfere with lawful activities. He expressed his belief that the language was put into the statutes because of incidents in other states.

REPRESENTATIVE LEDOUX asked for the meaning of "regulatory, prescriptive, proscriptive, or compulsory."

MR. DOEHL suggested that it is related to using the military presence to direct Alaskans to do something or not do something - stop them from entering an area or act in a certain way.

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REPRESENTATIVE LEDOUX concluded that under CSHB 152(MLV), that activity could not be performed by the militia without the governor's consent.

MR. DOEHL clarified that it could not be performed without the governor's authorization.

REPRESENTATIVE LEDOUX asked for more detail regarding actions that are considered regulatory, prescriptive, proscriptive, and compulsory.

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MR. DOEHL, after ascertaining that Lieutenant Colonel Weaver was no longer online, asked for the opportunity to provide a written supplemental answer to Representative LeDoux's question.

CHAIR KREISS-TOMKINS asked if the terms in question are from other sections of Alaska Statutes or from other state statutes.

MR. DOEHL responded that he did not know; he has seen them in both places.

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REPRESENTATIVE JOHNSON asked if CSHB 152(MLV) is constitutional and if the lines of succession are clearly defined in the Alaska State Constitution.

MR. DOEHL answered that a standing delegation, as opposed to giving the explicit authority to delegate, is not clearly defined under Alaska law.

REPRESENTATIVE JOHNSON mentioned that her staff spoke to the attorney general of another state with an organizational structure like Alaska's, and that state did not have the same issue that the proposed legislation addresses. She said that Alaska's governor can delegate the authority and line of

succession. She expressed her concern that CSHB 152(MLV) does not comply with the intent of the U.S. Constitution or the Alaska State Constitution. She maintained that civilian control is paramount in American government and taking authority away from civilian control contradicts that belief.

MR. DOEHL answered, "The definitive answer is it is not clearly defined under Alaska law." That is his interpretation as well that of DOL attorneys. He added that he cannot speak to the laws of other states.

REPRESENTATIVE JOHNSON cited Article 3, Section 9, of the Alaska State Constitution, which read, "In case of the temporary absence of the governor from office, the lieutenant governor shall serve as acting governor."

MR. DOEHL responded that there is no definition of "temporary absence" and no explanation of the duties that the acting governor takes or under what circumstances he/she would assume them. He stated that DOL has determined that these details are undefined.

REPRESENTATIVE JOHNSON cited Article 3, Section 14, of the Alaska State Constitution, which read, "When the lieutenant governor succeeds to the office of governor, he shall have the title, powers, duties and emoluments of that office." She offered that this section appears to define the authority of the lieutenant governor in this situation. She expressed her belief that the governor has executive authority over the Alaska National Guard, and that was intentional.

MR. DOEHL replied that the governor does have that authority and would have it under the proposed legislation. He stated that the difference between the two sections of Article 3 derives from the difference between "assumes" and "succeeds," which are undefined. He stated that "succeeds" infers taking on the powers of the office thereafter; "assumes" suggests the taking on of powers to be temporary.

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REPRESENTATIVE JOHNSON asked if there is any provision in the Alaska State Constitution allowing a member of the "armed services" of Alaska, regardless of rank, to assume authority as commander in chief.

MR. DOEHL, after ascertaining that Representative Johnson is referring to a member of either the Alaska organized militia or a member of the U.S. Armed Forces stationed in Alaska, answered, "No."

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REPRESENTATIVE BIRCH referred to Section 12(a) of CSHB 152(MLV), page 6, lines 4-14, which read in part, "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 State Defense Force ... if the member attends an educational, vocational, or technical training school in this state." He asked for the number of ASDF members who would qualify for the tuition benefit and what the cost would be.

MR. DOEHL noted that the amount allocated for tuition assistance for the Alaska National Guard is a set amount; regardless of how many members apply, the money "cuts off" after expended; and 88 percent of the funds were expended as of last year - or about \$300,000. He relayed that the proposed legislation would not "grow that pot" but would allow a different group of people to compete for the funds. He offered that ASDF currently has 120 active members; and those with [academic] degrees would be exempt.

REPRESENTATIVE BIRCH asked if there is an annual cap on the funds.

MR. DOEHL replied that the education benefits are limited to the University of Alaska System; and the cap is based on the number of credits or dollars, but in any case, is a well-defined amount. He mentioned that he could provide additional information.

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CHAIR KREISS-TOMKINS announced that CSHB 152(MLV) would be held over.

[4:29:18 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 4:29 p.m.