

**HB**

**152**

<TARGET><BILL>HB 152</BILL><SUBJECT>HB  
152</SUBJECT><COMM></COMM></TARGET>



# ALASKA STATE LEGISLATURE

## House Military & Veterans' Affairs Committee

REP. CHRIS TUCK

Chairman  
State Capitol, Room 204  
Juneau, AK 99801  
907 465 2095

Rep. Gabrielle LeDoux, Vice-Chair  
Rep. Justin Parish  
Rep. Ivy Spohnholz

Rep. Dan Saddler  
Rep. Lora Reinbold  
Rep. George Rauscher

---

### MEMORANDUM

**March 20, 2018**

**TO: Senator Kevin Meyer**  
**Chair, State Affairs Committee**

**FROM: Rep. Chris Tuck**  
**House Majority Leader**

A handwritten signature in blue ink, appearing to read "CT", enclosed in a hand-drawn oval.

**SUBJ: Hearing Request for House Bill 152**

I respectfully request a hearing for House Bill 152: Organized Militia: Alaska State Defense Force

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. HB152 also cleans up some title 26 language that is outdated and adds the Alaska State Defense Force to the tuition assistance program.

Included in the bill packet:

- House Bill 152 ver N
- Sponsor Statement
- Sectional Analysis
- Memo of changes
- Fiscal Note from Dept. of Military & Veterans Affairs
- Support and Opposition Letters

If you have any questions please feel free to contact me or my staff Kendra Kloster at 465-3579.

Thank you for your consideration.



# ALASKA STATE LEGISLATURE

## House Military & Veterans' Affairs Committee

REP. CHRIS TUCK

Chairman  
State Capitol, Room 204  
Juneau, AK 99801  
907.465.2095

Rep. Gabrielle LeDoux, Vice-Chair  
Rep. Justin Parish  
Rep. Ivy Spohnholz

Rep. Dan Saddler  
Rep. Lora Reinbold  
Rep. George Rauscher

---

### House Bill 152

*“An Act relating to the organized militia and relating to the authority of the adjutant general.”*

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 21<sup>st</sup> 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. 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 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 would provide necessary updates to Title 26 and appreciate your support.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Military and  
Veterans' Affairs

Office of the Commissioner

P.O. Box 5800  
JBER, AK 99505-0800  
Main: 907.428.6003  
Fax: 907.428.6019

April 12, 2017

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

Dear Representative Tuck:

HB 152 is an important step in continuing efforts to modernize Alaska's organized militia. The bill helps ensure the organized militia's four components – the Alaska Army National Guard (AKARNG), Alaska Air National Guard (AKANG), Alaska State Defense Force (ASDF), and Alaska Naval Militia – collectively constitute an efficient military force able to respond quickly to the needs of Alaska. Several key features of this legislation are as follows:

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

Here are additional details on each of these points:

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

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

HB 152 clarifies TAG, who already possesses statutory control of the organized militia, is also in command. Command and control are important functions in any military organization. Commanders set and are responsible for the organization's priorities, goals, and missions, while people in control have authority to direct people to accomplish those missions. It is logical, but not explicitly set in statute, that TAG should have both control and command of the organized militia.

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

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

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

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

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

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

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

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

#### **5. TAG has reasonable ability to promulgate appropriate regulations**

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

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

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

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

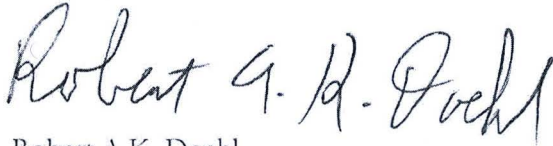
Language in the bill empowering TAG to order the organized militia into active state service mirrors long-established federal “Immediate Response Authority (IRA).” IRA provides legal authority to use military assets when imminently serious conditions exist in order to save lives, prevent human suffering,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

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Robert A.K. Doehl". The signature is written in a cursive, slightly slanted style.

Robert A.K. Doehl  
Deputy Commissioner



# Representative Chris Tuck

## House Majority Leader

Alaska State Legislature

District 23 - Representing Dimond Estates, Foxridge, Taku,  
Campbell, Northwood and Windemere

### MEMORANDUM

March 19, 2018

**TO:** Senator Kevin Meyer  
Chair, State Affairs Committee

**FROM:** Rep. Chris Tuck  
House Majority Leader

A handwritten signature in blue ink, appearing to read "C.T.", enclosed in a blue oval.

**SUBJ:** Memo of Changes

The House Military and Veterans Affairs Committee adopted one amendment to House Bill 152. The change took place on page 3, line 22 which clarified that the organized militia may not be used against or to mitigate any lawful activity. The previous language was specific to only organized labor activity.

The House State Affairs Committee deleted language related to the immediate response authority for the Adjutant General – deleted section 2 and most of section 3 of version U. This language would have allowed the Adjutant General to call the organized militia to duty in circumstances in which the Governor was unreachable in the event of a natural disaster or under imminently serious conditions where time or circumstance does not permit approval from the Governor.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Veterans' Affairs

Office of the Commissioner

P.O. Box 5800  
JBER, AK 99505-0800  
Main: 907.428.6003  
Fax: 907.428.601

**Department of Military and**

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

March 22, 2017

Dear Representative Tuck:

Thank you for introducing House Bill 152, "An Act relating to the organized militia; and relating to the authority of the adjutant general." Despite its unassuming title, HB 152 is an important step forward in our continuing efforts to modernize operations of Alaska's organized militia. HB 152 helps ensure the organized militia's four components – the Alaska Army National Guard (AKARNG), Alaska Air National Guard (AKANG), Alaska State Defense Force (ASDF), and Alaska Naval Militia – collectively constitute an efficient military force able to respond quickly to the needs of Alaska's citizens.

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 21<sup>st</sup> 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 re-established 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.

We hope this information is helpful.

Sincerely yours,



Robert A.K. Doehl  
Deputy Commissioner



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Military and  
Veterans' Affairs

Office of the Commissioner

P.O. Box 5800  
JBER, AK 99505-0800  
Main: 907.428.6003  
Fax: 907.428.6019

April 12, 2017

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

Dear Representative Tuck:

HB 152 is an important step in continuing efforts to modernize Alaska's organized militia. The bill helps ensure the organized militia's four components – the Alaska Army National Guard (AKARNG), Alaska Air National Guard (AKANG), Alaska State Defense Force (ASDF), and Alaska Naval Militia – collectively constitute an efficient military force able to respond quickly to the needs of Alaska. Several key features of this legislation are as follows:

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

Here are additional details on each of these points:

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

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

HB 152 clarifies TAG, who already possesses statutory control of the organized militia, is also in command. Command and control are important functions in any military organization. Commanders set and are responsible for the organization's priorities, goals, and missions, while people in control have authority to direct people to accomplish those missions. It is logical, but not explicitly set in statute, that TAG should have both control and command of the organized militia.

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

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

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

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

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

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

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

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

#### **5. TAG has reasonable ability to promulgate appropriate regulations**

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

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

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

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

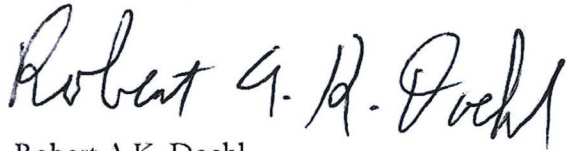
Language in the bill empowering TAG to order the organized militia into active state service mirrors long-established federal “Immediate Response Authority (IRA).” IRA provides legal authority to use military assets when imminently serious conditions exist in order to save lives, prevent human suffering,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

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Robert A.K. Doehl". The signature is written in a cursive, slightly slanted style.

Robert A.K. Doehl  
Deputy Commissioner

## Written Testimony of Lawrence D. Wood

### in opposition to HB152s authority of the adjutant general

My name is Lawrence D. Wood, age 64, a resident of Alaska 63 years. My address is 4750 Wolverine Rd., Palmer, Alaska. I am married 45 years to Lydia Wood, a retired elementary teacher of 27 years with PRWS RSD, and ASD. We are residents of House District 11. We have three grown children who live with their families and work in Alaska. We have 7 grandchildren, 5 of whom live in Alaska. My business is mining, environmental reclamation and writing. My father was a former Alaska Territorial and Alaska State Police Officer and my grandparents came to Alaska with the Bureau of Reclamation in 1952 for the construction of the Eklutna Power plant. My grandparents and my parents are buried here.

I am former Air National Guard, Army National Guard, Army Reserve, Civil Air Patrol, Alaska State Defense Force (ASDF), and presently a volunteer with the United States Coast Guard Auxiliary. I was awarded the Alaska Homeland Defense Medal and ribbon and the Alaska Emergency Response ribbon for the Orange Alert of Dec., 2003/Jan., 2004 and the Houston and Richardson Highway flood responses with the ASDF. I have served as the State Guard Association Western Region Director for the Military Emergency Management Specialist Academy and as a former Alaska State Director. I have a Senior Military Emergency Management Specialist (MEMS) rating. My service with the ASDF includes appointments with the 49<sup>th</sup> Military Police Constable Academy, 49<sup>th</sup> Military Police Brigade, ASDF and as a Training officer with the former 1<sup>st</sup> Battalion, 49<sup>th</sup> Military Police Brigade, ASDF. I served with the ASDF as a qualified armed state police military constable with certifications in chemical restraint and the use of the ASP baton. I have been a Community Emergency Response Team (CERT) Trainer. I supported the attempt to achieve justice for the victims of the crimes resulting from the failures of leadership of the DMVA made public in 2014.

### Testimony

As a long-time Alaskan, I do not believe that this bill is what Alaskans would want from their Legislature. Legislatively mandating and increasing the authority of the Adjutant General raises the specter of abuse, resolves nothing, improves nothing, and creates a greater potential for wrongdoing and abuse of personnel at the DMVA than previously existed. Legislatively mandating the authority of the Adjutant General, in concert with the Alaska Code of Military Justice (ACMJ), further dilutes the governor's responsibility and duty regarding oversight of the militia, and enhances greatly the potential for an Adjutant General to obfuscate, hinder, delay, obstruct, and deny public knowledge of any wrongdoing at the DMVA. This bill puts too much power into the office of the Adjutant General and provides the governor absolute deniability. This bill does not achieve greater transparency in government.

Further, the changes under AS 26.05.070 are short-sighted, and act to impose restrictions upon the organized militia when called to State Active Duty (SAD) in the event of an emergency. Alaskans are not made safer by the restrictions in (c) and (f). If the protest is lawful, why would the state militia be called to SAD in the first place? These changes are further discussed below.

Regarding the authority of the Adjutant General, the change that should have been made at the DMVA, and which would have been fully justified and would have acted to minimize the potential for the abuses and failures in leadership of recent history, would have been to combine the Adjutant General's Office and that of the Deputy Commissioner, DMVA and to restore the commissioner's office as a purely civilian appointment—and not a further retirement enhancement for a former Adjutant General or Alaska National Guard retired general officer or colonel. This was something Governor Walker supported during his campaign in 2010 and during the 2014 campaign. Such a change would have eliminated the military oversight of civilian departments and divisions within the DMVA and reduced the tolerance for the Adjutant General's "cabals" of loyal officers. This change would have focused the Adjutant General upon the management of state's military. HB152 should remedy this mistake, and should mandate the restoration of the commissioner as a purely civilian oversight. Doing so would end the specter of what came to the surface in 2014. Instead, this bill compounds the potential for a repeat.

HB152's imposing a legislative mandate in favor of the authority of the Adjutant General ignores the failures of the previous administration with respect to criminal conduct within the DMVA; including rape, a murder, misappropriation of property and the attempts to obstruct justice through interference with and undue influence over criminal investigations into felony crimes and the abject failure of a chain of command that rewarded loyalty to the Adjutant General over duty and responsibility to one's subordinates. The Adjutant General's ability to control subordinates was essential to avoid controversy and public knowledge of any wrongdoing. Crimes that were alleged in 2006 were not made public knowledge until 2014. It took two officers sacrificing their careers to bring knowledge of these wrongdoings to the public in 2014. The wrongdoings alleged in 2014 extend back to at least 2006, covering two administrations.

The focus on legislatively mandating the authority of the Adjutant General under HB152 will end whistleblowing at the DMVA. An Adjutant General will no longer have to worry about the specter of an officer taking knowledge of a controversy beyond the doors of the DMVA. Between the provision in HB152 regarding the authority of the Adjutant General and the ACMJ, an Adjutant General will have the tools to silence dissent and controversy. The governor will be without liability as the authority was legislatively mandated. Deniability of the governor is assured. The public will never again be privy to what happens within the DMVA.

This bill further 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 a time of emergency or non-emergency by Legislative mandate.

This bill effectively removes the existing civilian authority and responsibility for the conduct of the Adjutant General by Legislatively mandating to the Adjutant General authority that is now derived from direct orders and permissions by the governor.

This bill dilutes the authority of the governor in favor of the Adjutant General.

This bill fails to give accountability and transparency to the leadership of the DMVA and provides deniability to a governor.

Refusing the requested mandating by statute of the Adjutant General's authority would also eliminate the need for any changes under the statutes proposed for change under this bill. The changes proposed in this bill are unnecessary, improve nothing, and create the potential for greater harm than good. History dictates caution and critical review of any request for additional authority granted the Adjutant General's Office.

I am also surprised and disappointed, and absolutely opposed to excusing violent behavior couched as "protest" as provided for under the proposed changes to AS 26.05.070. The rule of law applies. Riots cannot be tolerated or condoned, no matter the reason. Violence is not something that Alaskans want our state government to condone. Evidently, increasing the safety and security of Alaskans is not part of the purpose of this legislation.

The proposed changes to AS 26.05.100 under this bill reflect the removal of the governor as the authority over the ASDF and fails to understand that Congress already authorized the State Defense Forces back in 1955. Please see 32 USC §109(c) and National Guard Bureau Regulation 10-4 (2011), which bar any federal oversight, including that of the National Guard and its officers over State Defense Forces. The ASDF is state-only, under the authority of the governor. Changing that authority to the Adjutant General ignores the mismanagement of the ASDF since 2008 to the present. The proposed coverage for medical and workman's comp for injuries sustained while on "inactive"/unpaid SAD for training is a welcome recognition and very reasonable, given the sacrifice of the ASDF member. Under the DMVA, the ASDF's potential will never be fully realized to the benefit of the people of the State of Alaska. This is the reason why the ASDF is the subject of a bill being drafted in the Senate that will fully define and legislatively mandate the purpose of the ASDF and how it is to be used.

As a former ASDF member, I do appreciate the proposed recognition in the changes to AS 26.05.296(a) regarding the ability to qualify for educational benefits that have been in place for the two federal parts of the organized militia as far back as I can remember. However, money is an issue and I doubt such a provision would remain for ASDF members.

Please see the DOD Inspector General's report of 30 April, 2014, "Evaluation of Department of Defense Interaction with State Defense Forces". This report opines that misunderstanding of the State Defense Forces and an overly restrict interpretation of 32 USC §109(c) by the various DOD agencies, the National Guard Bureau, the Adjutant Generals and governors of the various states are the underlying reasons for the lack of any support or priority at the state and federal level for the State Defense Forces of the various states.

In the federal government, the military has a civilian in charge. The Department of Defense (DOD) is managed by the Secretary of Defense, a presidential appointee, whose appointment is confirmed by the Senate. The DOD is not managed by the Chairman, Joint Chiefs of Staff. The purpose is to maintain civilian control over the military to prevent the military from effecting a coup against a sitting President and Congress. The balance to this is that all military personnel swear an oath to the Constitution to prevent the military from supporting either a coup by seditious military leadership or a tyrannical government acting in violation of the Constitution.

Hurricane Katrina post response demonstrated a disturbing proclivity of National Guard personnel to act in violation of a law-abiding citizen's right to keep and bear arms during the illegal weapons confiscations of the Katrina recovery response. Both OK Army National Guard and LA Army National Guard units acted to direct support of illegal weapons seizures in violation of the Constitution and their obligation to disobey any unlawful orders. ARNG troops have violated peoples' constitutional rights when under orders, in violation of their duty and obligation to refuse such orders.

Without adequate protections under law, including limitations and the imposition of strong civilian oversight of the Adjutant General, the people of the State of Alaska will be no better protected than the Louisiana residents whose constitutional rights had been illegally denied them. Further, given the crimes and conduct of the members and leadership of the Alaska Army National Guard revealed in 2014, motivation of any legislation that gives the Adjutant General autonomy to any degree is in question.

The Alaska State Defense Force is the only militia fully under the control of the governor. The ASDF has been grossly mismanaged and ignored by the Adjutant Generals, because the ASDF is not the National Guard and brings in no money for the state. The ASDF was largely ignored until September 12, 2001, when then Gov. Tony Knowles authorized the use of personal arms and re-tasked the ASDF as the 49<sup>th</sup> Military Police Brigade, ASDF to be used as a state military police constabulary when called to SAD under AS 26.05.070. The Attorney General's Opinion 661-06-0093 requested by the U.S. Coast Guard in 2006 to determine the law enforcement authority of the ASDF recognized that the ASDF, as part of the organized militia, acts with state police powers and its members as peace officers when called to SAD under AS 26.05.070. The AG's opinion has never been rescinded by the Legislature.

Gov. Frank Murkowski changed the paradigm at the Dept. of Military and Veterans Affairs (DMVA) when he combined the commissioner's office and that of the Adjutant General. Murkowski combined the offices to save money and to reduce the management overhead at the DMVA.

In the 2014 election, Governor Sean Parnell was defeated by Bill Walker. The National Guard controversy played a major part in his defeat. Today, with House Bill 152 by The House Special Committee on Military and Veterans' Affairs, there is a new effort to protect those in power and to give more power where power should be suspect.

When Bill Walker ran for governor in 2010, his platform reflected that the DMVA should return to civilian control. He was further going to support a restoration of the Alaska State Defense Force as a viable State of Alaska military disaster response asset. He did not change those positions by making such changes public or known to his campaign coordinators during the campaign in 2014. After he was sworn in as governor he abandoned that position and left the joint Adjutant General/Commissioner office intact. He has further acted to set in motion a radical change in the Alaska State Defense concept that may conflict with 32 USC §109(c) and National Guard Bureau Regulation 10-4 (2011) with his "Bush Battalion" concept modeled after the Canadian Armed Forces Canadian Ranger program embodying attributes of the Army

National Guard regulation and direct federal military oversight in response to the reduction in force of the Alaska Army National Guard.

On the day of the State Fair Parade in August, 2013, then candidate Walker was introduced to the ongoing allegations of rape, murder and misappropriation of property by Army National Guard personnel in a meeting with then LTC Ken Blalock, Alaska Army National Guard. (Blalock was the whistleblower who brought the entire the allegations of criminal acts and wrong doing at the DMVA into the public eye by March, 2014.) During the 2014 campaign, Walker assured the public that he would see that there was justice for the victims and that those breaking the law would be held accountable. Such did not happen to the degree expected.

In 2014, former LTC Linda Dunegan made public additional allegations of the falsification of combat readiness reports by senior Air National Guard officers, expanding the knowledge of corruption of the leadership of Alaska's National Guard.

HB152 calls for the Adjutant General to act in "conformity" with the governor's instructions. Conformity is not an exacting compliance and allows a degree of latitude that was revealed in the public disclosures leading up to the defeat of Governor Parnell in the 2014 election. Instead of increasing oversight of the Adjutant General, HB152 legislatively mandates decreasing oversight and increasing the autonomy of the Adjutant General.

The questionable conduct of then MG Tom Katkus in halting ongoing criminal investigations in favor of an administrative review of policies by the National Guard Bureau's Office of Complex Investigations during an election year, and his obvious conflict of interest as a former ranking Anchorage Police Department officer were never addressed. APD began the rape investigations, but never completed the investigations. Is this the nature of the "conformity" to be exercised under the proposed changes to AS 26.05.060?

The proposed changes under AS 26.05.070(b-g) need to be removed from this bill. These provisions are unnecessary. (b) is compromised by (c), and the primary mission of the organized militia under (a) is compromised by (c) and (f). The primary mission under AS 26.05.070 is for the militia to be used as a state police agency. See AG Opinion 661-06-0093. I take it the state is to ignore acts of violence and destruction of property under the guise of political, union, or other protest? That military threat or criminal intent during an emergency is to be dealt without acting in a prescriptive, proscriptive, regulatory or compulsory manner? (c) is absurd. Why the concern over "military power", when the police have an unrestricted use of force that allows them to kill with virtual impunity? The Alaska organized militia are your friends and neighbors, sons, daughters, nieces, nephews . . . Alaskans. (c) makes the job dangerous and demonstrates a failure to understand the mission under AS 26.05.070 and exhibits a lack of trust and faith in those volunteering to serve Alaska.

Evidently, it is anticipated that the criminal element so prevalent in our society today, including those who will use violence to achieve political ends and paid agitators, gangs, and criminals, will not use violence to achieve their ends during an emergency. In a perfect world, maybe so. However, Alaska is growing more dangerous the further we sink into a burgeoning recession.

Drug use is up, especially heroin to such an extent that the state has declared an emergency and is giving out heroin antidote kits for free. Synthetic drugs are popular that result in a violent psychotic reaction within 24-48 hours of taking the drug—this includes bath salts, spice, and other synthetics. This makes life interesting for our police and Dept. of Corrections personnel.

The threats to Alaska include, but are not limited to: earthquake, tsunami, flooding, EMP event by either a solar X-class flare like the 1859 Carrington Event or a military strike using a high altitude nuclear detonation to produce an EMP; terrorism, nuclear military strike against Alaska's missile defense system, WMD event through domestic or foreign inspired terrorism, and invasion by a hostile military. Potential adversaries include North Korea, Iran, Peoples Republic of China, and Russia.

Our homegrown and imported criminal element is now more vicious and violent than ever before. Alaska now has the presence of many of the major Outside gangs. These gangs are sending those who are under threat of arrest Outside to Alaska to avoid arrest. Gang initiations are up, they require a felony class crime. Under SB91, a person committing a class C felony will get a suspended sentence and that is about it. Alaska's SB91 is making it easier for gangs to recruit. Thus, crime is rising, and growing more violent. Yet, the concern is about the organized militia and not the criminal.

Why does the Legislature think that our organized militia should be hobbled and restrained without justification? Why are there provisions that benefit criminals?

The primary mission of the organized militia under AS 26.05.070 is as a state police force acting under its own chain of command and working with or subordinate to the civil police. I have done so. No one was afraid of me with my weapon, uniform and public manner. In fact, those impacted were very happy to see us. People whose lives have been interrupted by natural disaster want assurances that their property will be protected and an armed state military police constable is that assurance. Been there, done that. Being armed keeps one safe, gives confidence to the citizen that one is there to deter crime. Further, the police are not tied up on a check point, but able to perform their primary law enforcement mission.

During the Big Lake Fire, I checked on a friend's property and watered the roof of the house located on Hollywood Drive. At the intersection of Hollywood and Vine, there was an ARNG HUMMVEE with an unarmed ARNG soldier with a radio. I stopped to inform the ARNG NCO what I was going to do and where I was going to do it. While talking, I noted two men on ATVs heading parallel down Hollywood into the fire area. I asked if the Troopers would be notified, as looting was ongoing during the fire. I was informed that the AST would not be notified and that I did not need to stop, either. That soldier deterred nothing. Not his fault, he was under orders as to what he could and could not do. That is the kind of security that will result from the proposed provisions under AS 26.05.070(c, f) that limit the use of the militia as a military police constabulary.

For 8 years, the ASDF was an armed state military police constabulary, and performed that mission without incident, saving the State of Alaska hundreds of thousands of dollars in

overtime and reducing the impact upon local and state law enforcement by keeping the police officer on patrol doing their job.

AS 26.05.070 as it now exists under statute is fine. It works. The changes are not necessary, they make Alaskans less safe, and increase the danger to the members of the organized militia.

The rule of law must always apply, and for that armed constabulary is necessary in the face of the potential for violence by the criminal—not to mention moose, bear, rabid wolves, rabid foxes, and rabid coyotes appearing at remote checkpoints that might be established along Alaska's highways.

The authority to call up the organized militia by the Adjutant General under the proposed changes to AS 26.05.070(b) without the governor's knowledge is dangerous. This raises the specter of the Adjutant General acting in opposition to lawful authority of the governor in favor of a hostile federal government or to further personal ambitions.

AS 26.05.070(g) conflicts with established federal precedent and law. As the recent reduction in force of the Army National Guard has demonstrated, the National Guard is a thing of the federal government, the state has limited use and no ability to restrict federal priorities in use. What the federal government paid for, the federal government owns, not the state.

Mandating the authority of Adjutant General is a mistake and, once again, a demonstration of exception, rather than subordination to the law. HB152 mandating by statute the Adjutant General's authority is an affront to those who never received justice in 2014, and a further affirmation that those in power will never be subject to the full extent of the law. There should be greater accountability and transparency in state government, not the opposite.

This bill is a bad idea.

This completes my testimony.

Dated 20 March, 2017.



Lawrence D. Wood

E-mail: wood.larry.d@wood-alaska.com

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version:	CSHB 152(STA)
Fiscal Note Number:	2
(H) Publish Date:	2/23/2018

Identifier: HB152-MVA-COM-03-10-17  
 Title: ORGANIZED MILITIA; AK ST. DEFENSE FORCE  
 Sponsor: MILITARY & VETERANS' AFFAIRS  
 Requester: (H) Military and Veterans' Affairs

Department: Department of Military and Veterans' Affairs  
 Appropriation: Military and Veterans' Affairs  
 Allocation: Office of the Commissioner  
 OMB Component Number: 414

### Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates					
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

### Fund Source (Operating Only)

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

### Positions

Full-time								
Part-time								
Temporary								

### Change in Revenues

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2019) cost:** 0.0 (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

### ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed? N/A

### Why this fiscal note differs from previous version/comments:

Updated for 2018
------------------

Prepared By: <u>Brian Duffy</u>	Phone: (907)428-7210
Division: <u>Administrative Services</u>	Date: 01/20/2018 11:50 AM
Approved By: <u>Laurel J. Hummel</u>	Date: 01/20/18
Agency: <u>Office of the Commissioner</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION

**Analysis**

Passage of HB152 would have no material effect on the Department of Military and Veterans' Affairs procedures. This bill will also have no impact on the employees and services provided by the Department as it only relates to the authority of the Adjutant General. Therefore, the Department of Military and Veterans' Affairs is submitting a zero fiscal note.