

CS FOR HOUSE BILL NO. 152(MLV)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Offered: 4/5/17

Referred: State Affairs

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

1 AND OTHER VEGETATIVE MATERIAL.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (b) The regulations adopted under this section must

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

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

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

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

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

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

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

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

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