

SENATE BILL NO. 60

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR HUGHES

Introduced: 2/15/19

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska State Defense Force."**

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

3 * **Section 1.** AS 26.05.010(c) is amended to read:

4 (c) The **governor** [ADJUTANT GENERAL] may, by regulation, prescribe the
5 maximum age for eligibility in the militia **and any physical qualifications to meet**
6 **specific mission requirements for the Alaska State Defense Force.**

7 * **Sec. 2.** AS 26.05.030(d) is amended to read:

8 (d) The Alaska State Defense Force consists of units authorized by the
9 governor and manned by volunteer personnel qualifying under state law and
10 regulation, **with priority given to personnel who have served in the military, a**
11 **military auxiliary, a state defense force, the United States Coast Guard, a**
12 **volunteer auxiliary, or a state or municipal law enforcement agency. To be**
13 **eligible to volunteer, former military personnel shall have an honorable**
14 **discharge or general discharge under honorable conditions. A person with a**
15 **prior felony conviction, a prior criminal conviction that prevents ownership of**

1 arms, or a prior felony or misdemeanor conviction for a crime involving moral
 2 turpitude is not eligible to volunteer under this subsection, unless, in the case of
 3 extreme emergency, the governor waives those prohibitions. All Alaska State
 4 Defense Force personnel shall be

5 (1) appointed, commissioned, or warranted, and assigned by the
 6 governor, or the adjutant general as the governor's designee, for a period of six years
 7 after

8 (A) an applicant submits an application, a current resume,
 9 and a copy of the applicant's fingerprints made by a certified fingerprint
 10 technician, undergoes a national criminal history record check, and,
 11 under penalty of perjury, files a sworn statement disclosing any
 12 prescription drug use;

13 (B) the application submitted under (A) of this paragraph is
 14 reviewed by a board appointed by the commander of the Alaska State
 15 Defense Force and made up of senior commissioned officers and at least
 16 one senior noncommissioned officer;

17 (C) the applicant's sworn statement disclosing any
 18 prescription drug use submitted under (A) of this paragraph is reviewed
 19 by the Alaska State Defense Force Surgeon General to ensure there is no
 20 bar to armed duty; as part of the review, the surgeon general may require
 21 an applicant to provide a written statement from a medical care provider
 22 regarding the use and effect of the prescription drugs; and

23 (D) the application submitted under (A) of this paragraph
 24 is approved by both the board and the surgeon general, or a waiver is
 25 granted following a written appeal to the governor by an applicant whose
 26 application is denied;

27 (2) subject to serve on state active duty at the call and by order of the
 28 governor.

29 * **Sec. 3.** AS 26.05.100 is amended to read:

30 **Sec. 26.05.100. Alaska State Defense Force.** An armed [A] state militia,
 31 known as the Alaska State Defense Force, may be organized under the Office of the

1 **Governor and maintained** through voluntary enlistments **out of the unorganized**
 2 **militia** under regulations as to discipline and training that may be prescribed by the
 3 governor. [DURING THE TIME THAT THE ALASKA NATIONAL GUARD OR
 4 THE ALASKA NAVAL MILITIA, OR ANY PART OF EITHER OF THEM, IS
 5 NOT AVAILABLE TO THE STATE BY REASON OF ACTIVE FEDERAL
 6 SERVICE, OR THE NATIONAL GUARD OR NAVAL MILITIA REQUIRES
 7 AUGMENTATION TO PERFORM ITS STATE MISSION, THE GOVERNOR
 8 MAY ACTIVATE THE ALASKA STATE DEFENSE FORCE.]

9 * **Sec. 4.** AS 26.05.100 is amended by adding new subsections to read:

10 (b) 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 because 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 (c) The Alaska State Defense Force shall be maintained as an organized,
 15 armed, trained military force capable of timely and effective response to state
 16 emergencies, and on other occasions the governor considers appropriate, to provide
 17 armed military assistance to civil and military authorities in the preservation of life,
 18 property, and public safety.

19 (d) The primary mission of the Alaska State Defense Force is to serve as a
 20 constabulary with state police powers. An Alaska State Defense Force member shall
 21 act as a peace officer and may use personal arms when called to state active duty
 22 under AS 26.05.070. The Alaska State Defense Force may have additional missions,
 23 as authorized by the governor. In this subsection, "constabulary" means an armed
 24 police force organized on military lines, but distinct from the regular Army.

25 (e) The Alaska State Defense Force may have units of varying strength
 26 established in the state. Units operate at reduced strength until the governor authorizes
 27 full strength by ordering the unorganized militia into active state service under
 28 AS 26.05.070 or recruiting produces the manpower required for full strength.

29 (f) The Alaska State Defense Force shall issue a badge to each member who
 30 qualifies as a state military police constable. A member may wear a badge issued
 31 under this subsection only when the member is under orders and in uniform. A

1 member shall return the badge to the Alaska State Defense Force upon discharge. A
2 badge issued under this subsection must be metal or woven, contain the state seal in
3 the center of the badge, and contain the words "Alaska State Police Auxiliary" and
4 "Alaska State Defense Force" on the face of the badge. An Alaska State Defense Force
5 uniform may include the state flag on the right shoulder, but may not include other
6 federal military badges or insignia. Alaska State Defense Force insignia, devices, and
7 awards may be worn on uniforms of the United States Army as permitted under
8 federal law.

9 (g) The Alaska State Defense Force shall have a state-only chain of command
10 structure with the governor as the commander in chief. The Alaska State Defense
11 Force shall use the same rank structure as the Alaska Army National Guard. All rank
12 appointments shall be made based on the needs of the Alaska State Defense Force and
13 the member's education, state knowledge, leadership ability, business experience, and
14 prior experience in the military, a state defense force, the United States Coast Guard,
15 the United States Coast Guard Auxiliary, the Civil Air Patrol, or state or municipal
16 law enforcement. The governor shall appoint each officer to the Alaska State Defense
17 Force at the recommendation of the commanding officer of the Alaska State Defense
18 Force. Appointment as an officer may not require any educational qualifications.

19 (h) A member of the Alaska State Defense Force

20 (1) shall, at no cost to the state, provide the member's personal arms,
21 uniforms, and field gear suitable for militia duty and training compatible with current
22 Alaska State Defense Force standards for arms and ammunition; the state has no
23 ownership interest in items provided by a member under this paragraph;

24 (2) shall attend monthly training drills without pay;

25 (3) shall be ready to respond to activation under AS 26.05.070 within
26 24 hours of notification;

27 (4) shall be subject to the discipline and training prescribed by state
28 law and the conduct manual described in (l) of this section;

29 (5) shall be subject to lawful orders of Alaska State Defense Force
30 officers; and

31 (6) may not be subject to federal military law or discipline.

1 (i) The state shall recognize the arms of an Alaska State Defense Force
2 member as individually owned, private arms and may not abridge, diminish, or
3 interfere with those rights with respect to use of those arms for duty in the Alaska
4 State Defense Force.

5 (j) Qualified units or members of the Alaska State Defense Force shall be
6 eligible for

7 (1) state decorations or awards available to the units or members of the
8 Alaska National Guard;

9 (2) any decoration or award given by the State Guard Association of
10 the United States to state defense forces; and

11 (3) awards authorized by the commanding officer.

12 (k) The Alaska State Defense Force may request or receive federal and state
13 grants or assistance for materials and training. To the extent allowed under state law, a
14 state agency and the legislature may give priority to the Alaska State Defense Force
15 over a nongovernment agency for funding requested for administration, training, and
16 necessary mission-specific material. The Alaska State Defense Force may accept
17 assistance from private sources for equipment, training, and transportation.

18 (l) The governor shall appoint the commanding officer of the Alaska State
19 Defense Force. The commanding officer shall, while holding office, have the grade of
20 brigadier general and the title of Commanding Officer of the Alaska State Defense
21 Force. The commanding officer is responsible to the governor for the day-to-day
22 administration, operation, discipline, and organization of the Alaska State Defense
23 Force. The commanding officer shall

24 (1) create a conduct manual for members; the conduct manual must
25 apply to a member regardless of whether the member has been called to state active
26 duty under AS 26.05.070; the conduct manual must provide

27 (A) for the discipline of any minor military offense, which
28 must be limited to nonmonetary, administrative punishment;

29 (B) that the standard for a conviction for insubordination is
30 evidence beyond a reasonable doubt; in this subparagraph, "insubordination"
31 means the wilful violation of a lawful order given by a lawful authority;

1 (C) that when a member is convicted by a civil authority for an
2 act or omission that violates the conduct manual adopted by the commanding
3 officer and local criminal law, foreign or domestic, the commanding officer
4 may authorize additional discipline upon notice of conviction;

5 (D) for due process and recognition of the individual rights and
6 unique voluntary status of members of the Alaska State Defense Force;

7 (2) approve, by written order, all manuals and policies regarding
8 Alaska State Defense Force administration, discipline, operation, organization, and
9 training; all manuals and policies under this subsection must be in writing, including
10 policies for

11 (A) the uniformity of arms and equipment, including caliber
12 and types of arms, to enable the use of federal military small arms ammunition
13 in the event of a military emergency;

14 (B) training requirements for the use of arms for militia duty;

15 (C) personal equipment requirements for state active duty
16 under AS 26.05.070 and additional missions;

17 (3) authorize the uniforms, insignias, devices, and badges to be worn
18 on Alaska State Defense Force uniforms;

19 (4) establish, by written order, units of the Alaska State Defense Force
20 and specify, in writing, when a unit is deactivated;

21 (5) approve a unique insignia and flag for each unit of the Alaska State
22 Defense Force;

23 (6) promote morale and unit cohesion, including authorizing Alaska
24 State Defense Force awards and decorations to denote bravery, exceptional service,
25 length of service, good conduct, achievement, leadership, attendance, marksmanship,
26 and contributions to the Alaska State Defense Force by members and nonmembers;

27 (7) prepare, in consultation with the commissioner of military and
28 veterans' affairs and the commissioner of public safety, and submit to the governor, an
29 annual plan regarding the governor's ordering of the organized and unorganized militia
30 into active state service under AS 26.05.070 and 26.05.110; the annual plan must
31 include a

1 (A) plan for ordering the unorganized militia into active state
2 service;

3 (B) description of how the unorganized militia will be
4 organized into units of the Alaska State Defense Force;

5 (C) description of the training, arms, ammunition, personal
6 gear, quarters, transport, logistics, and other assistance that the department
7 would provide to meet the requirements of missions under AS 26.05.070 and
8 additional missions ordered by the governor;

9 (8) report monthly in writing to the governor and the commissioner of
10 military and veterans' affairs the total number of active members available to be called
11 to state active duty under AS 26.05.070;

12 (9) keep records of Alaska State Defense Force administrative policies,
13 procedures, and state service, and each member's service;

14 (10) report annually to the governor and the legislature the time and
15 money members of the Alaska State Defense Force have contributed to the benefit of
16 the state and account for any grants or contributions made to the Alaska State Defense
17 Force in the previous calendar year; the commanding officer shall deliver the report to
18 the senate secretary and the chief clerk of the house of representatives and shall notify
19 the legislature that the report is available.

20 * **Sec. 5.** AS 26.05.110 is amended to read:

21 **Sec. 26.05.110. Governor may order unorganized militia into active**
22 **service.** In the event of imminent invasion by a foreign power and for the same
23 reasons set **out** [FORTH] in AS 26.05.070, if the governor has ordered into active
24 service all of the available organized militia or if the **Alaska National Guard or**
25 **Alaska Naval Militia** [ORGANIZED MILITIA] is in active federal service, the
26 governor may order the unorganized militia or any portion of it considered necessary
27 into active service **in the Alaska State Defense Force**, and have **unorganized militia**
28 **members** [THEM] perform military duty for the state subject to this chapter, as the
29 circumstances require. **Unorganized militia members ordered into active service in**
30 **the Alaska State Defense Force under this section are not subject to the**
31 **requirements for Alaska State Defense Force personnel under AS 26.05.030(d).**

1 * **Sec. 6.** AS 26.05.160 is amended by adding new subsections to read:

2 (f) The adjutant general shall support the use by the Alaska State Defense
3 Force of state and federal military and law enforcement firearms training facilities
4 open to use by the Alaska state troopers or the Alaska Army National Guard. The
5 adjutant general shall assist the Alaska State Defense Force in acquiring any federal
6 permission necessary for members of the Alaska State Defense Force to transport,
7 possess, and use personal arms and ammunition owned by the member for training at a
8 federal military facility.

9 (g) The adjutant general shall support the creation of an Alaska State Defense
10 Force identification card that is acceptable to federal authorities for each Alaska State
11 Defense Force member. If a member is called to state active duty training or Alaska
12 State Defense Force business, the member shall use the identification card under this
13 subsection for the purpose of accessing facilities under federal military jurisdiction.
14 An Alaska State Defense Force member shall return an identification card to the
15 Alaska State Defense Force upon discharge.

16 (h) The adjutant general shall

17 (1) provide for the use by the Alaska State Defense Force of armories
18 available under AS 26.05.290;

19 (2) assist the Alaska State Defense Force in securing suitable facilities
20 when there are no armories available under AS 26.05.290;

21 (3) support the use by the Alaska State Defense Force of available state
22 agency vehicles for authorized training and to support state active duty mission
23 requirements during an emergency;

24 (4) support the participation of the Alaska State Defense Force in
25 applicable state and federal military, civil defense, and disaster response exercises;
26 participation by Alaska State Defense Force members in exercises described in this
27 paragraph is paid state active duty;

28 (5) provide transportation support for Alaska State Defense Force units
29 and personnel, including transportation by the Alaska National Guard, during disaster
30 response, military emergency, and state or federal training exercises;

31 (6) assist the commanding officer of the Alaska State Defense Force in

1 requesting support from the Department of Public Safety to obtain air and
 2 communications support from the Civil Air Patrol during an emergency or state or
 3 federal training exercise in which the Department of Public Safety participates; and

4 (7) support annual encampment and training for Alaska State Defense
 5 Force units under AS 26.05.280.

6 * **Sec. 7.** AS 26.05.170 is amended to read:

7 **Sec. 26.05.170. Governor's command and instructions exercised through**
 8 **the adjutant general.** The governor's command **of the Alaska National Guard and**
 9 **the Alaska Naval Militia** is exercised through the adjutant general, who shall carry
 10 out the policies of the governor in military affairs. The adjutant general represents the
 11 governor and shall act in conformity with the governor's instructions. The adjutant
 12 general shall exercise control over the military department of the state.

13 * **Sec. 8.** AS 26.05.260(i) is amended to read:

14 (i) When active state service is authorized by the governor or by the adjutant
 15 general as the governor's designee **under AS 26.05.070**, members of the organized
 16 militia are entitled to receive, for each day of active service under AS 26.05.070,
 17 allowances to the same extent, in the same manner, and under the same conditions as
 18 provided for state officials and employees under AS 39.20.110 - 39.20.170. **During**
 19 **military court proceedings, a member of the Alaska State Defense Force who is**
 20 **either the accused or a member of a military court under AS 26.05.415 is entitled**
 21 **to receive pay and allowances as provided in this subsection. Except for**
 22 **participation in exercises described in AS 26.05.160(h)(4)** [HOWEVER], pay or
 23 allowances are not authorized for training or community service activities of members
 24 of the Alaska State Defense Force.

25 * **Sec. 9.** AS 26.05.370 is amended to read:

26 **Sec. 26.05.370. Persons subject to military courts; jurisdiction.** The code of
 27 military justice applies to a member of the militia at all times, except when a member
 28 of the

29 **(1)** militia is

30 **(A)** [(1)] in active federal service under 10 U.S.C. (Armed
 31 Forces); or

1 **(B)** [(2)] outside the state and not in active duty status;

2 **(2) Alaska State Defense Force has not been called to state active**
 3 **duty under AS 26.05.070.**

4 * **Sec. 10.** AS 26.05.415 is amended to read:

5 **Sec. 26.05.415. Courts-martial classified. Subject to (b) of this section, the**
 6 [THE] military courts for the militia of the state are

7 (1) a general court-martial, consisting of

8 (A) a military judge, not fewer than five members, and not
 9 fewer than one alternate member; or

10 (B) only a military judge, if, before the court is assembled, the
 11 accused, knowing the identity of the military judge and after consultation with
 12 defense counsel, requests, orally on the record or in writing, a court composed
 13 of only a military judge and the military judge approves;

14 (2) a special court-martial, consisting of

15 (A) a military judge, not fewer than three members, and not
 16 fewer than one alternate member; or

17 (B) only a military judge, if one has been detailed to the court
 18 [.] and the accused so requests under the conditions prescribed in (1)(B) of this
 19 **subsection** [SECTION]; and

20 (3) a summary court-martial, consisting of one commissioned officer.

21 * **Sec. 11.** AS 26.05.415 is amended by adding a new subsection to read:

22 (b) If the accused is a member of the Alaska State Defense Force, the
 23 members and alternate members of the military court under (a) of this section must be
 24 officers of the Alaska State Defense Force.