
SENATE BILL 5875

State of Washington

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By Senators Gaspard, von Reichbauer, A. Smith, Winsley and M. Rasmussen; by request of Military Department

Read first time 02/19/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to the powers and duties of the governor as
2 commander-in-chief of the Washington national guard; amending RCW
3 38.08.040; and adding a new section to chapter 38.08 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 38.08.040 and 1989 c 19 s 7 are each amended to read
6 as follows:

7 In event of war, insurrection, rebellion, invasion, tumult, riot,
8 mob, or organized body acting together by force with intent to commit
9 a felony or to offer violence to persons or property, or by force and
10 violence to break and resist the laws of this state, or the United
11 States, or in case of the imminent danger of the occurrence of any of
12 said events, or at the lawful request of competent local authority in
13 support of enforcement of controlled substance statutes, or whenever
14 responsible civil authorities shall, for any reason, fail to preserve
15 law and order, or protect life or property, or the governor believes
16 that such failure is imminent, or in event of public disaster, the
17 governor shall have power to order the organized militia of Washington,
18 or any part thereof, into active service of the state to execute the
19 laws, and to perform such duty as the governor shall deem proper.

1 (d) Permit and encourage a high degree of flexibility in the
2 deployment of national guard forces in the interest of efficiency.

3 (e) Maximize the effectiveness of the national guard in those
4 situations that call for its utilization under this compact.

5 (f) Provide protection for the rights of national guard personnel
6 when performing duty in other states in counter-drug activities.

7 (g) Ensure uniformity of state laws in the area of national guard
8 involvement in interstate counter-drug activities by incorporating said
9 uniform laws within the compact.

10 **ARTICLE II**

11 **ENTRY INTO FORCE AND WITHDRAWAL**

12 (a) This compact shall enter into force when enacted into law by
13 any two states. Thereafter, this compact shall become effective as to
14 any other state upon its enactment thereof.

15 (b) Any party state may withdraw from this compact by enacting a
16 statute repealing the same, but no such withdrawal shall take effect
17 until one year after the governor of the withdrawing state has given
18 notice in writing of such withdrawal to the governors of all other
19 party states.

20 **ARTICLE III**

21 **MUTUAL ASSISTANCE AND SUPPORT**

22 (a) As used in this article:

23 (1) "Drug interdiction and counter-drug activities" means the use
24 of national guard personnel, while not in federal service, in any law
25 enforcement support activities that are intended to reduce the supply
26 or use of illegal drugs in the United States. These activities
27 include, but are not limited to:

28 (a) Providing information obtained during either the normal course
29 of military training or operations or during counter-drug activities,
30 to federal, state, or local law enforcement officials that may be
31 relevant to a violation of any federal or state law within the
32 jurisdiction of such officials;

33 (b) Making available any equipment, including associated supplies
34 or spare parts, base facilities, or research facilities of the national
35 guard to any federal, state, or local civilian law enforcement official

1 for law enforcement purposes, in accordance with other applicable law
2 or regulation;

3 (c) Providing available national guard personnel to train federal,
4 state, or local civilian law enforcement in the operation and
5 maintenance of equipment, including equipment made available above, in
6 accordance with other applicable law;

7 (d) Providing available national guard personnel to operate and
8 maintain equipment provided to federal, state, or local law enforcement
9 officials pursuant to activities defined and referred to in this
10 compact;

11 (e) Operation and maintenance of equipment and facilities of the
12 national guard or law enforcement agencies used for the purposes of
13 drug interdiction and counter-drug activities;

14 (f) Providing available national guard personnel to operate
15 equipment for the detection, monitoring, and communication of the
16 movement of air, land, and sea traffic, to facilitate communications in
17 connection with law enforcement programs, to provide transportation for
18 civilian law enforcement personnel, and to operate bases of operations
19 for civilian law enforcement personnel;

20 (g) Providing available national guard personnel, equipment, and
21 support for administrative, interpretive, analytic, or other purposes;

22 (h) Providing available national guard personnel and equipment to
23 aid federal, state, and local officials and agencies otherwise involved
24 in the prosecution or incarceration of individuals processed within the
25 criminal justice system who have been arrested for criminal acts
26 involving the use, distribution, or transportation of controlled
27 substances as defined in 21 U.S.C. Sec. 801 et seq., or otherwise by
28 law, in accordance with other applicable law.

29 (2) "Demand reduction" means providing available national guard
30 personnel, equipment, support, and coordination to federal, state,
31 local, and civic organizations, institutions and agencies for the
32 purposes of the prevention of drug abuse and the reduction in the
33 demand for illegal drugs.

34 (3) "Requesting state" means the state whose governor requested
35 assistance in the area of counter-drug activities.

36 (4) "Responding state" means the state furnishing assistance, or
37 requested to furnish assistance, in the area of counter-drug
38 activities.

1 (5) "Law enforcement agency" means a lawfully established federal,
2 state, or local public agency that is responsible for the prevention
3 and detection of crime and the enforcement of penal, traffic,
4 regulatory, game, immigration, postal, customs, or controlled
5 substances laws.

6 (6) "Official" means the appointed, elected, designated, or
7 otherwise duly selected representative of an agency, institution, or
8 organization authorized to conduct those activities for which support
9 is requested.

10 (7) "Mutual assistance and support agreement" or "agreement" means
11 an agreement between the national guard of this state and one or more
12 law enforcement agencies or between the national guard of this state
13 and the national guard of one or more other states, consistent with the
14 purposes of this compact

15 (8) "Party state" refers to a state that has lawfully enacted this
16 compact.

17 (9) "State" means each of the several states of the United States,
18 the District of Columbia, the Commonwealth of Puerto Rico, or a
19 territory or possession of the United States.

20 (b) Upon the request of a governor of a party state for assistance
21 in the area of drug interdiction, counter-drug, and demand reduction
22 activities, the governor of a responding state shall have authority
23 under this compact to send without the borders of his or her state and
24 place under the temporary operational control of the appropriate
25 national guard or other military authorities of the requesting state,
26 for the purposes of providing such requested assistance, all or any
27 part of the national guard forces of his or her state as he or she may
28 deem necessary, and the exercise of his or her discretion in this
29 regard shall be conclusive.

30 (c) The governor of a party state may, within his or her
31 discretion, withhold the national guard forces of his or her state from
32 such use and recall any forces or part or member thereof previously
33 deployed in a requesting state.

34 (d) The national guard of this state is hereby authorized to engage
35 in counter-drug activities and demand reduction.

36 (e) The adjutant general of this state, in order to further the
37 purposes of this compact, may enter into a mutual assistance and
38 support agreement with one or more law enforcement agencies of this
39 state, including federal law enforcement agencies operating within this

1 state, or with the national guard of one or more other party states to
2 provide personnel, assets, and services in the area of counter-drug
3 activities and demand reduction provided that all parties to the
4 agreement are not specifically prohibited by law to perform said
5 activities.

6 (f) The agreement must set forth the powers, rights, and
7 obligations of the parties to the agreement, where applicable, as
8 follows:

9 (1) Its duration;

10 (2) The organization, composition, and nature of any separate legal
11 entity created thereby;

12 (3) The purpose of the agreement;

13 (4) The manner of financing the agreement and establishing and
14 maintaining its budget;

15 (5) The method to be employed in accomplishing the partial or
16 complete termination of the agreement and for disposing of property
17 upon such partial or complete termination;

18 (6) Provision for administering the agreement, which may include
19 creation of a joint board responsible for such administration;

20 (7) The manner of acquiring, holding, and disposing of real and
21 personal property used in this agreement, if necessary;

22 (8) The minimum standards for national guard personnel implementing
23 the provisions of this agreement;

24 (9) The minimum insurance required of each party to the agreement,
25 if necessary;

26 (10) The chain of command or delegation of authority to be followed
27 by national guard personnel acting under the provisions of the
28 agreement;

29 (11) The duties and authority that the national guard personnel of
30 each party state may exercise; and

31 (12) Any other necessary and proper matters.

32 Agreements prepared under the provisions of this section are exempt
33 from any general law pertaining to intergovernmental agreements.

34 (g) As a condition precedent to an agreement becoming effective
35 under this part, the agreement must be submitted to and receive the
36 approval of the office of the attorney general of Washington. The
37 attorney general of the state of Washington may delegate his or her
38 approval authority to the appropriate attorney for the Washington

1 national guard subject to those conditions which he or she decides are
2 appropriate. Said delegation must be in writing:

3 (1) The attorney general, or his or her agent as stated above,
4 shall approve an agreement submitted to him or her under this part
5 unless he or she finds that it is not in proper form, does not meet the
6 requirements set forth in this part, or otherwise does not conform to
7 the laws of Washington. If the attorney general disapproves an
8 agreement, he or she shall provide a written explanation to the
9 adjutant general of the Washington national guard.

10 (2) If the attorney general, or his or her authorized agent as
11 stated above, does not disapprove an agreement within thirty days after
12 its submission to him or her, it is considered approved by him or her.

13 (h) Whenever national guard forces of any party state are engaged
14 in the performance of duties, in the area of drug interdiction,
15 counter-drug, and demand reduction activities, pursuant to orders, they
16 shall not be held personally liable for any acts or omissions which
17 occur during the performance of their duty.

18 **ARTICLE IV**
19 **RESPONSIBILITIES**

20 (a) Nothing in this compact shall be construed as a waiver of any
21 benefits, privileges, immunities, or rights otherwise provided for
22 national guard personnel performing duty pursuant to Title 32 of the
23 United States Code nor shall anything in this compact be construed as
24 a waiver of coverage provided for under the Federal Tort Claims Act.
25 In the event that national guard personnel performing counter-drug
26 activities do not receive rights, benefits, privileges, and immunities
27 otherwise provided for national guard personnel as stated above, the
28 following provisions shall apply:

29 (1) Whenever national guard forces of any responding state are
30 engaged in another state in carrying out the purposes of this compact,
31 the members thereof so engaged shall have the same powers, duties,
32 rights, privileges, and immunities as members of national guard forces
33 of the requesting state. The requesting state shall save and hold
34 members of the national guard forces of responding states harmless from
35 civil liability, except as otherwise provided herein, for acts or
36 omissions that occur in the performance of their duty while engaged in
37 carrying out the purposes of this compact, whether responding forces

1 are serving the requesting state within the borders of the responding
2 state or are attached to the requesting state for purposes of
3 operational control.

4 (2) Subject to the provisions of paragraphs (3), (4), and (5) of
5 this Article, all liability that may arise under the laws of the
6 requesting state or the responding states, on account of or in
7 connection with a request for assistance or support, shall be assumed
8 and borne by the requesting state.

9 (3) Any responding state rendering aid or assistance pursuant to
10 this compact shall be reimbursed by the requesting state for any loss
11 or damage to, or expense incurred in the operation of, any equipment
12 answering a request for aid, and for the cost of the materials,
13 transportation, and maintenance of national guard personnel and
14 equipment incurred in connection with such request, provided that
15 nothing herein contained shall prevent any responding state from
16 assuming such loss, damage, expense, or other cost.

17 (4) Unless there is a written agreement to the contrary, each party
18 shall provide, in the same amounts and manner as if they were on duty
19 within their state, for pay and allowances of the personnel of its
20 national guard units while engaged without the state pursuant to this
21 compact and while going to and returning from such duty pursuant to
22 this compact.

23 (5) Each party state providing for the payment of compensation and
24 death benefits to injured members and the representatives of deceased
25 members of its national guard forces in case such members sustain
26 injuries or are killed within their own state shall provide for the
27 payment of compensation and death benefits in the same manner and on
28 the same terms in the event such members sustain injury or are killed
29 while rendering assistance or support pursuant to this compact. Such
30 benefits and compensation shall be deemed items of expense reimbursable
31 pursuant to paragraph (3) of this Article.

32 (b) Officers and enlisted personnel of the national guard
33 performing duties subject to proper orders pursuant to this compact
34 shall be subject to and governed by the provisions of their home state
35 code of military justice whether they are performing duties within or
36 without their home state. In the event that any national guard member
37 commits, or is suspected of committing, a criminal offense while
38 performing duties pursuant to this compact without his or her home
39 state, he or she may be returned immediately to his or her home state

1 and said home state shall be responsible for any disciplinary action to
2 be taken. However, nothing in this section shall abrogate the general
3 criminal jurisdiction of the state in which the offense occurred.

4 **ARTICLE V**
5 **DELEGATION**

6 Nothing in this compact shall be construed to prevent the governor
7 of a party state from delegating any of his or her responsibilities or
8 authority respecting the national guard, provided that such delegation
9 is otherwise in accordance with law. For purposes of this compact,
10 however, the governor shall not delegate the power to request
11 assistance from another state.

12 **ARTICLE VI**
13 **LIMITATIONS**

14 Nothing in this compact shall:

15 (1) Authorize or permit national guard units or personnel to be
16 placed under the operational control of any person not having the
17 national guard rank or status required by law for the command in
18 question.

19 (2) Deprive a properly convened court of jurisdiction over an
20 offense or a defendant merely because of the fact that the national
21 guard, while performing duties pursuant to this compact, was utilized
22 in achieving an arrest or indictment.

23 **ARTICLE VII**
24 **CONSTRUCTION AND SEVERABILITY**

25 This compact shall be liberally construed so as to effectuate the
26 purposes thereof. The provisions of this compact shall be severable
27 and if any phrase, clause, sentence, or provision of this compact is
28 declared to be contrary to the Constitution of the United States or of
29 any state or the applicability thereof to any government, agency,
30 person, or circumstance is held invalid, the validity of the remainder
31 of this compact and the applicability thereof to any government,
32 agency, person, or circumstance shall not be affected thereby. If this
33 compact shall be held contrary to the constitution of any state

1 participating herein, the compact shall remain in full force and effect
2 as to the remaining party states and in full force and effect as to the
3 state affected as to all severable matters.

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