

# HOUSE BILL REPORT

## HJM 4020

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**As Passed House:**

March 14, 2007

**Brief Description:** Requesting the Washington Air and Army National Guard not be federalized.

**Sponsors:** By Representatives Seaquist, Morrell, Bailey, Ericks, Kelley, Roach, Kessler, Green, Campbell, Williams, McDonald, VanDeWege, Hudgins, Chase, Hunt, Dunn, McCune, Buri, Haler, Priest, Kretz, Goodman, Cody, P. Sullivan, Sommers, Hasegawa, Rolfes, Pedersen, Miloscia, Simpson, Sells, Roberts, Lovick, Hunter, Darneille, McCoy, Hurst, Clibborn, Conway, Linville, Kenney, Ormsby, Springer and Santos.

**Brief History:**

**Committee Activity:**

State Government & Tribal Affairs: 2/27/07 [DP].

**Floor Activity:**

Passed House: 3/14/07, 93-3.

**Brief Summary of Bill**

- Requests Congress to pass pending legislation related to presidential control of the National Guard.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** Do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Green, Kretz, McDermott, Miloscia and Ormsby.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Chandler, Ranking Minority Member and Armstrong, Assistant Ranking Minority Member.

**Staff:** Alison Hellberg (786-7152).

**Background:**

Federal legislation was enacted last year that gives the President of the United States power to federalize the National Guard (Guard) without consent of the governors. Previously,

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governors had control of the Guard in domestic emergencies and the President had control for overseas demands.

The President may employ the Guard in federal service to:

- restore public order as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack, or incident, or other condition that the President determines that the state is incapable of maintaining public order; or
- suppress, in a state, any insurrection, domestic violence, or conspiracy that creates a condition where people of the state are deprived of any right, privilege, immunity, or protection provided for in the U.S. Constitution.

There are currently two companion bills pending before Congress that revive previous authority on the use of armed forces and the Guard.

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### **Summary of Bill:**

Legislative findings are made that:

- The Washington National Guard (Guard) has served Washington well and faithfully.
- Nearly 8,600 men and women of the Washington Air and Army Guard serve the state and the nation, at home and abroad.
- The Militia clause of the U.S. Constitution guarantees each state the right to maintain an organized militia (Guard) for the protection and defense of its citizens.
- The Guard plans, trains, and exercises with local, state, and federal officials to provide relief under the Governor's control during emergencies and disasters.
- State control of the Guard in the event of an emergency is critical to the execution of local, state, interstate, and federal emergency management plans.
- Placing the Guard under federal control without the consent of the Governor undermines the Guard's effectiveness and deprives the State of Washington the ability to protect its own citizens.
- Section 1076 of the John Warner National Defense Authorization Act of 2007 (P.L. 109-364) was adopted without any public hearing and improvidently amended the Insurrection Act.
- The unilateral Presidential authority conferred by Section 1076 of P.L. 109-364 is devoid of any required consultation or consent of the Congress.
- The provisions of Section 1076 of P.L. 109-364 were signed into law despite the opposition of the nation's governors acting on behalf of their respective sovereign states.
- Pending companion bills before Congress, if enacted, will rescind the objectionable provisions of Section 1076 of P.L. 109-364.

The United States House of Representatives and the United States Senate are requested to enact H.R. 869 and S. 513, which relate to presidential control of the Guard.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Staff Summary of Public Testimony:**

(In support) The very serious point here is a fundamental constitutional question. Back into revolutionary times, the states' militias have been separate from the federal military. The states' right to maintain a militia is enshrined in the U.S. Constitution. Both the conservative and liberal in the Legislature will agree that these constitutional provisions are important to protect.

Section 1076 unnecessarily expanded the President's authority and undermined the Governor's authority relating to the National Guard. It could lead to confusion and inability to respond to residents' needs because it calls into question whether the Governor or the President has primary responsibility during a domestic emergency. It was passed without consultation of the governors and without discussion or debate. Repealing this section will open up the dialogue on how best to deal with domestic emergencies and disasters.

(Opposed) None.

**Persons Testifying:** Representative Seaquist, prime sponsor; and Brigadier General Gordon Toney, Washington Army National Guard.

**Persons Signed In To Testify But Not Testifying:** None.