

HOUSE BILL REPORT

SSJM 8012

As Passed House:

April 9, 2007

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

Sponsors: By Senate Committee on Government Operations & Elections (originally sponsored by Senators Brown, Hewitt, Franklin, Fraser, Oemig, Kline, Kilmer, Swecker, Hobbs, Hatfield, Marr, Spanel, Regala, Kohl-Welles, Berkey, Pridemore, Rasmussen, McAuliffe, Sheldon and Shin).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 3/28/07, 3/30/07 [DP].

Floor Activity:

Passed House: 4/9/07, 82-16.

Brief Summary of Substitute Bill

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

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:

The federal John Warner National Defense Authorization Act of 2007 (P.L. 109-364) gives the President of the United States power to federalize the National Guard without consent of the governors. Previously, governors had control of the National Guard in domestic emergencies and the President had control for overseas demands.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The President may employ the National 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 National Guard.

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 nation, at home and abroad.
- The Militia clause of the U.S. Constitution guarantees each state the right to maintain an organized militia 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 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.

Appropriation: None.

Fiscal Note: Not requested.

Staff Summary of Public Testimony:

(In support) The bill that passed out of the Senate is identical to the House companion bill that the committee has already heard. The changes made to the Senate version were made to the House version prior to its introduction. The Governor, the National Governors Association, and the National Conference of State Legislatures are all in favor of this.

(Opposed) The encroachment of federal power on the states is a problem, especially with the current administration. Currently, however, there is a conspiracy in the State of Washington. It is necessary for the President to take control of the Guard to stop the project in the Port of Olympia that is violating the Environmental Policy Act.

Persons Testifying: (In support) Brigadier General Gordon Toney, Washington Military Department.

(Opposed) Arthur West.

Persons Signed In To Testify But Not Testifying: None.