

SENATE BILL REPORT

SJM 8012

As Reported By Senate Committee On:
Government Operations & Elections, February 26, 2007

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

Sponsors: 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: Government Operations & Elections: 2/15/07, 2/26/07 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Joint Memorial No. 8012 be substituted therefor, and the substitute joint memorial do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, Kline, Pridemore and Swecker.

Staff: Sharon Swanson (786-7447)

Background: The Washington National Guard consists of both the Army National Guard and the Air National Guard. The National Guard allows for command and control of units by individual governors or by the President of the United States, depending on the nature of the call to duty. The President reserves the right to mobilize the National Guard in federal status during national emergencies, and he serves as the commander-in-chief for units mobilized for federal active duty.

When National Guard units are not mobilized or under federal control, the Governor serves as commander-in-chief. The Adjutants' General of the state is responsible for training and readiness. Under Title 32 of the United States Code, governors may mobilize National Guard units for state active duty. These soldiers are considered to be in "Title 32 status." Examples of when a governor may call the National Guard into action include local or statewide emergencies, such as storms, drought, and civil disturbances.

Summary of Bill: The President and Congress are requested not to federalize the Washington Air and Army National Guard so that it may continue to serve our state in its unique capacity.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Government Operations & Elections): The text of the resolution has been rewritten to reference: the militia clause of the United States Constitution which guarantees

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each state the right to maintain an organized militia for the protection and defense of its citizens; state control of the guard in the event of emergencies is critical to the execution of the National Response Plan, the Washington State Comprehensive Emergency Management Plan, city and county emergency plans; placing the guard under federal control without the consent of the Governor would undermine the guard's effectiveness and deprive Washington the ability to protect its own citizens; the John Warner National Defense Authorization Act of 2007 signed into law by President George W. Bush, amending the Federal Insurrection Act to authorize the President to impose federal control over the National Guard, without notice, consultation, or consent of the Governor or Congress, in the event of a natural disaster, epidemic, or other serious public emergency.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Staff Summary of Public Testimony: PRO: There is a historic link between the state and our national guard. The Washington National Guard has been serving our state since territorial times. The federalization of our guard would move away from this historic link. Allowing the President to federalize the guard could cause confusion in a time of emergency. The Governor should be in control during national disasters and emergencies. Allowing the President to take control of the guard without informing or consulting with the Governor is unnecessary and moves us in an unwise direction. Let's put ourselves on record with Congress that this is not something the state of Washington agrees with. For over 200 years, the President has had authority to utilize military force domestically to enforce the laws if there are riots or insurrection. This authority is granted under the Federal Insurrection Act. That authority has been used twice in that 200 year period, once in the 1950's to deal with the issue of school desegregation and then again during the 1992 LA riots. Now federal law has been amended to allow the President to take control of the National Guard in response to a natural disaster, epidemic, public emergency, act of terrorism or other serious incident. This was done by amending the Federal Insurrection Act to allow the President to use military force in these types of situations.

Persons Testifying: PRO: Senator Brown, prime sponsor; Major General Tim Lowenberg, Washington Military Department.