

1 H.300

2 Introduced by Representatives Fisher of Lincoln, Ancel of Calais, Aswad of
3 Burlington, Bray of New Haven, Burke of Brattleboro,
4 Clarkson of Woodstock, Davis of Washington, Deen of
5 Westminster, Donovan of Burlington, Edwards of Brattleboro,
6 Emmons of Springfield, French of Randolph, Haas of
7 Rochester, Hooper of Montpelier, Jewett of Ripton, Kitzmiller
8 of Montpelier, Klein of East Montpelier, Larson of Burlington,
9 Lenes of Shelburne, Lorber of Burlington, Macaig of Williston,
10 Maier of Middlebury, Marek of Newfane, Martin of Springfield,
11 Masland of Thetford, McCullough of Williston, Mitchell of
12 Barnard, Mrowicki of Putney, Nuovo of Middlebury, Orr of
13 Charlotte, Peltz of Woodbury, Poirier of Barre City, Ram of
14 Burlington, Shand of Weathersfield, Sharpe of Bristol, Spengler
15 of Colchester, Weston of Burlington, Wizowaty of Burlington,
16 Zenie of Colchester and Zuckerman of Burlington

17 Referred to Committee on

18 Date:

19 Subject: Public protection; national guard; deployment

1 Statement of purpose: This bill proposes to:

2 (1) Urge the President to withdraw members of the Vermont National
3 Guard from Iraq, since the congressional authorization for their call to federal
4 service and deployment to Iraq has expired.

5 (2) Limit national guard members to service only on behalf of the state
6 unless lawfully called into federal service.

7 An act relating to the Vermont National Guard and the call to federal
8 service for deployment in Iraq

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. FINDINGS

11 The general assembly finds that:

12 (1) Under Article I, Section 8, Clause 15 of the United States
13 Constitution, Congress may call forth the militia to execute the laws of the
14 union, suppress insurrections, and repel invasions.

15 (2) Since 1933, federal law has provided that persons enlisting in a state
16 national guard unit simultaneously enlist in the national guard of the United
17 States, a part of the U.S. Army. The enlistees retain their status as state
18 national guard members unless and until ordered to active federal duty and
19 then revert to state status upon being relieved from federal service.

1 (3) Under the U.S. Constitution, each state's national guard unit is
2 controlled by the governor, but can be called up for federal duty by the
3 President, provided that the President is acting pursuant to the Constitution and
4 laws of the United States.

5 (4) The War Powers Act of 1973 (Public Law 93-148) specifically limits
6 the power of the President of the United States to wage war without the
7 approval of Congress.

8 (5) In October 2002, the U.S. Congress authorized military force under
9 the Authorization for the Use of Military Force Against Iraq, Public Law No.
10 107-243 (AUMF), a law enacted in response to a presidential request under the
11 War Powers Act. The AUMF stated in part that the President is authorized to
12 use the armed forces of the United States as he or she determines to be
13 necessary and appropriate in order to do both of the following:

14 (A) Defend the national security of the United States against the
15 continuing threat posed by Iraq.

16 (B) Enforce all relevant United Nations Security Council Resolutions
17 regarding Iraq.

18 (6) The AUMF contained neither a termination date nor a process or
19 procedure to determine when the authorization should terminate.

20 (7) U.S. forces, including members of national guard units from
21 Vermont and other states, have long since addressed the purposes recited under

1 the AUMF. However, Iraq does not pose a continuing threat to the national
2 security of the United States, nor does any relevant United Nations Security
3 Council Resolution remain to be enforced.

4 (8) Other than the AUMF, there is no authority under the
5 Constitution or the laws of the United States for the continued presence
6 of Vermont national guard members in Iraq.

7 (9) Requiring Vermont National Guard members to remain in
8 Iraq beyond the time and scope set forth in the AUMF has caused
9 significant harm to guard members and their families, including death
10 and injury, loss of time together, and financial hardship.

11 Sec. 2. EXPIRATION OF THE 2002 AUTHORIZATION FOR USE
12 OF MILITARY FORCE AND REQUEST TO THE
13 PRESIDENT TO WITHDRAW VERMONT NATIONAL
14 GUARD MEMBERS FROM IRAQ

15 The Authorization for the Use of Military Force of October 16,
16 2002, having expired, the general assembly and the governor urge the
17 President to withdraw all members of the Vermont National Guard
18 from Iraq subject only to conditions of time and manner specifically
19 required to assure their safety and well-being during removal
20 operations.

1 Sec. 3. 20 V.S.A. § 368a is added to read:

2 § 368a. LIMITATION OF VERMONT NATIONAL GUARD SERVICE IN

3 WARS NOT STATUTORILY OR CONSTITUTIONALLY

4 AUTHORIZED

5 The general assembly affirms that the Vermont National Guard shall
6 only be sent into national service for deployment pursuant to a
7 declaration of war or other congressional enactment that expressly
8 authorizes the use of military force in a country or region and
9 specifically describes the mission for which the national guard troops
10 are to be deployed.

11 Sec. 4. 20 V.S.A. § 368b is added to read:

12 § 368b. AUTHORITY FOR THE VERMONT ATTORNEY

13 GENERAL TO DEFEND DECISIONS TO DEPLOY OR

14 NOT DEPLOY THE VERMONT NATIONAL GUARD

15 The attorney general is authorized to appear in any state or federal
16 court with jurisdiction over the deployment of the Vermont National
17 Guard to defend any decision of the governor and adjutant general with
18 respect to their decision to deploy or not deploy the guard.