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H.738

Introduced by Representatives Fisher of Lincoln, Ancel of Calais, Aswad of
Burlington, Atkins of Winooski, Bohi of Hartford, Botzow of
Pownal, Burke of Brattleboro, Clarkson of Woodstock,
Conquest of Newbury, Consejo of Sheldon, Courcelle of
Rutland City, Davis of Washington, Deen of Westminster,
Donahue of Northfield, Donovan of Burlington, Edwards of
Brattleboro, Emmons of Springfield, Evans of Essex, Frank of
Underhill, French of Shrewsbury, French of Randolph, Geier of
South Burlington, Haas of Rochester, Heath of Westford,
Hooper of Montpelier, Howard of Rutland City, Jewett of
Ripton, Johnson of South Hero, Keenan of St. Albans City,
Kitzmiller of Montpelier, Klein of East Montpelier, Lanpher of
Vergennes, Larson of Burlington, Lenes of Shelburne, Lorber of
Burlington, Macaig of Williston, Maier of Middlebury, Marek
of Newfane, Martin of Springfield, Masland of Thetford,
McCullough of Williston, Milkey of Brattleboro, Miller of
Shaftsbury, Minter of Waterbury, Mitchell of Barnard, Moran
of Wardsboro, Mrowicki of Putney, Nease of Johnson, Nuovo
of Middlebury, O'Brien of Richmond, Obuchowski of
Rockingham, Orr of Charlotte, Partridge of Windham, Pellett of

1 Chester, Peltz of Woodbury, Poirier of Barre City, Ram of
2 Burlington, Shand of Weathersfield, Sharpe of Bristol, Smith of
3 Mendon, Spengler of Colchester, Stevens of Waterbury,
4 Stevens of Shoreham, Sweaney of Windsor, Taylor of Barre
5 City, Toll of Danville, Townsend of Randolph, Waite-Simpson
6 of Essex, Webb of Shelburne, Weston of Burlington, Wheeler
7 of Derby, Wilson of Manchester, Wizowaty of Burlington,
8 Young of St. Albans City, Zenie of Colchester and Zuckerman
9 of Burlington

10 Referred to Committee on

11 Date:

12 Subject: Public protection; national guard; deployment

13 Statement of purpose: This bill proposes to require that the governor review
14 every federal order that places the Vermont National Guard on federal active
15 duty to determine whether the order was issued pursuant to a declaration of
16 war.

17 An act relating to the Vermont National Guard

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

1 Sec. 1. FINDINGS

2 (a) The general assembly holds the highest unwavering respect and support
3 for the members of the Vermont National Guard for their service to our state
4 and our nation. We honor them for their service and sacrifice. We also
5 recognize and honor their families for the sacrifices they make in the absence
6 of their loved ones. Our nation's military is based on the willingness of
7 citizens to serve on a voluntary basis. Our Vermont National Guard members
8 exemplify the spirit of that tradition.

9 (b) Under Article I, Section 8, Clause 15 of the United States Constitution,
10 Congress may call forth the militia to execute the laws of the union, suppress
11 insurrections, and repel invasions.

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

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

1 (e) The War Powers Act of 1973 (Public Law 93-148) specifically limits
2 the power of the President of the United States to wage war without the
3 approval of Congress.

4 Sec. 2. 20 V.S.A. § 369 is added to read:

5 § 369. LIMITATION OF VERMONT NATIONAL GUARD SERVICE IN
6 WARS NOT STATUTORILY OR CONSTITUTIONALLY
7 AUTHORIZED

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

13 Sec. 3. 20 V.S.A. § 370 is added to read:

14 § 370. GOVERNOR'S REVIEW OF FEDERAL DEPLOYMENT
15 ORDERS FOR VERMONT NATIONAL GUARD;
16 AUTHORITY FOR GOVERNOR TO DEPLOY OR NOT
17 DEPLOY

18 (a) The governor shall review every federal order that places the Vermont
19 National Guard on federal active duty after the effective date of this section to
20 determine whether the order has been issued pursuant to a declaration of war,
21 or is consistent with the specific terms and conditions of any other

1 congressional enactment and is therefore, in either event, lawful or valid. If
2 the governor determines that the order is not lawful or valid, the governor shall
3 take all necessary and appropriate actions to prevent the Vermont National
4 Guard from being placed on federal active duty.

5 (b) Within 30 days after completing a review pursuant to subsection (a) of
6 this section, the governor shall report to the house committee on general,
7 housing and military affairs and the senate committee on government
8 operations. The report shall summarize the review, including the decision
9 reached, the reasoning for the decision, and any action the governor has taken
10 or proposes to take in response to the review.

11 Sec. 4. 20 V.S.A. § 371 is added to read:

12 § 371. 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 court
16 with jurisdiction over the deployment of the Vermont National Guard to
17 defend any decision of the governor and adjutant general with respect to their
18 decision to deploy or not deploy the guard.