

1 H.360

2 Introduced by Representative Fisher of Lincoln

3 Referred to Committee on

4 Date:

5 Subject: Public protection; national guard; deployment

6 Statement of purpose: This bill proposes that the governor review every
7 federal order that places the Vermont National Guard on federal active duty to
8 determine whether the order was issued pursuant to a declaration of war.

9 An act relating to the Vermont National Guard

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

11 Sec. 1. FINDINGS

12 The general assembly finds that:

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

16 (2) Since 1933, federal law has provided that persons enlisting in a state
17 national guard unit simultaneously enlist in the national guard of the United
18 States, a part of the U.S. Army. The enlistees retain their status as state
19 national guard members unless and until ordered to active federal duty and
20 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 Sec. 2. 20 V.S.A. § 369 is added to read:

9 § 369. GOVERNOR'S REVIEW OF FEDERAL DEPLOYMENT

10 ORDERS FOR VERMONT NATIONAL GUARD;

11 AUTHORITY FOR GOVERNOR TO DEPLOY OR NOT

12 DEPLOY

13 (a) The governor shall review every federal order issued after the effective
14 date of this section that places the Vermont National Guard on federal active
15 duty for deployment outside the territories of the United States into an area of
16 armed hostilities or an area where an imminent involvement by the guard in
17 armed hostilities is likely, to determine whether the order has been issued
18 pursuant to a declaration of war, or is consistent with the specific terms and
19 conditions of any other congressional enactment and is therefore, in either
20 event, lawful or valid. If the governor determines that the order is not lawful

1 or valid, the governor shall take all necessary and appropriate actions to
2 prevent the Vermont National Guard from being placed on federal active duty.

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

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

10 § 370. AUTHORITY FOR THE VERMONT ATTORNEY

11 GENERAL TO DEFEND DECISIONS TO DEPLOY OR

12 NOT DEPLOY THE VERMONT NATIONAL GUARD

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

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

18 § 371. LIMITATION OF VERMONT NATIONAL GUARD SERVICE IN

19 WARS NOT STATUTORILY OR CONSTITUTIONALLY

20 AUTHORIZED

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