

H.845

Introduced by Representatives Chesnut-Tangerman of Middletown Springs  
and Troiano of Stannard

Referred to Committee on

Date:

Subject: Internal security and public safety; National Guard; federal duty

Statement of purpose of bill as introduced: This bill proposes to require the Governor to review every order to place a unit of the Vermont National Guard in federal active duty status for service in a military conflict to determine whether that order was issued pursuant to a Congressional authorization for the use of military force.

An act relating to review of orders placing the Vermont National Guard in federal active duty status

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Under Article I, Section 8, Clause 15 of the U.S. Constitution,  
Congress may call forth “the Militia to execute the Laws of the Union,  
suppress Insurrections and repel Invasions.”

1           (2) Since 1933, federal law has provided that persons enlisting in a state  
2           National Guard unit simultaneously enlist in the National Guard of the United  
3           States, a reserve component of the U.S. Army. The enlistees retain their status  
4           as state National Guard members unless and until they are ordered to active  
5           duty in the National Guard of the United States. Upon being relieved from  
6           federal active duty, they revert to state National Guard status.

7           (3) Each state's National Guard is controlled by its governor when it is  
8           in state status. However, a state National Guard unit can be called up for  
9           federal active duty by the President, provided that the President is acting  
10          pursuant to the applicable provisions of the U.S. Constitution and federal law.

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

14          Sec. 2. 20 V.S.A. § 370 is added to read:

15          § 370. GOVERNOR'S REVIEW OF FEDERAL DEPLOYMENT ORDERS

16                 FOR VERMONT NATIONAL GUARD; AUTHORITY

17          (a)(1) The Governor shall review every federal order that places the  
18          Vermont National Guard on federal active duty status for deployment outside  
19          the United States into an area of armed hostilities, or an area where the  
20          Vermont National Guard is likely to be involved in armed hostilities, to

1 determine whether the order was issued pursuant to and is consistent with  
2 either:

3 (A) a Congressional declaration of war; or

4 (B) a Congressional authorization for the use of military force.

5 (2) If the Governor determines that the order was not issued pursuant to  
6 a Congressional declaration of war or authorization for the use of military  
7 force, the Governor shall take all necessary and appropriate actions to prevent  
8 the Vermont National Guard from being placed on federal active duty.

9 (b) Within 30 days after completing a review pursuant to subsection (a)(1)  
10 of this section, the Governor shall report to the House Committee on General,  
11 Housing, and Military Affairs and the Senate Committee on Government  
12 Operations. The report shall summarize the review, including the decision  
13 reached, the reasoning for the decision, and any action the Governor has taken  
14 or proposes to take based on the review.

15 Sec. 3. 20 V.S.A. § 371 is added to read:

16 § 371. ATTORNEY GENERAL; ACTION TO PREVENT DEPLOYMENT  
17 OF VERMONT NATIONAL GUARD

18 If the Governor determines that an order reviewed pursuant to subsection  
19 370(a) of this chapter was not issued pursuant to a Congressional declaration  
20 of war or authorization for the use of military force, the Attorney General shall  
21 represent the Governor in any State or federal court with jurisdiction over the

1 deployment of the Vermont National Guard and may take any legal action  
2 necessary to prevent the deployment.

3 Sec. 4. 20 V.S.A. § 372 is added to read:

4 § 372. DECLARATION OF POLICY; VERMONT NATIONAL GUARD;

5 SERVICE IN MILITARY CONFLICT

6 It is the policy of the State of Vermont that the Vermont National  
7 Guard shall only serve in federal active duty in an area of armed  
8 hostilities, or an area where the Vermont National Guard is likely to be  
9 involved in armed hostilities, if the Vermont National Guard is ordered  
10 to such federal active duty pursuant to a Congressional declaration of  
11 war or authorization for the use of military force that specifically  
12 describes the mission or conflict in relation to which the Vermont  
13 National Guard is being deployed.

14 Sec. 5. EFFECTIVE DATE

15 This act shall take effect on July 1, 2020.