

1 H.785

2 Introduced by Representatives Sammis of Castleton and Headrick of

3 Burlington

4 Referred to Committee on

5 Date:

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

7 Statement of purpose of bill as introduced: This bill proposes to require the
8 Governor to review every order to place a unit of the Vermont National Guard
9 in federal active duty status for service in a military conflict to determine
10 whether that order was issued in conformance with the requirements of the
11 U.S. Constitution.

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

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

15 Sec. 1. SHORT TITLE

16 This act may be cited as the “Vermont Defend the Guard Act”.

17 Sec. 2. FINDINGS

18 The General Assembly finds that:

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

4 (2) James Monroe, the fifth President of the United States, wrote in
5 1815 that “Congress shall have power to provide for calling forth the militia to
6 execute the laws of the Union; what laws? All laws which may be
7 constitutionally made.”

8 (3) The 10th Amendment to the U.S. Constitution provides that “the
9 powers not delegated to the United States by the Constitution, nor prohibited
10 by it to the States, are reserved to the States respectively, or to the people.”

11 (4) The 10th Amendment defines the scope of federal power as being
12 that which has been delegated by the people of the several states to the federal
13 government in the U.S. Constitution.

14 (5) Daniel Webster, in an 1814 speech in Congress, said “[t]he operation
15 of measures thus unconstitutional and illegal ought to be prevented by a resort
16 to other measures which are both constitutional and legal. It will be the solemn
17 duty of the state governments to protect their own authority over their own
18 militia, and to interpose between their citizens and arbitrary power. These are
19 among the objects for which the state governments now exist.”

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

2 § 370. REVIEW OF FEDERAL ORDERS; AUTHORITY

3 (a) The Governor shall not release the Vermont National Guard into active-
4 duty combat unless the U.S. Congress has passed an official declaration of war
5 or has explicitly called forth the Vermont National Guard pursuant to Article I,
6 Section 8, Clause 15 of the U.S. Constitution for one of the following
7 purposes:

8 (1) a military invasion of the United States;

9 (2) an insurrection; or

10 (3) to execute the laws of the United States, provided that the laws were
11 enacted consistent with the provisions of the U.S. Constitution.

12 (b) The Governor shall review every order that places any unit of the
13 Vermont National Guard on federal active duty status to determine if it is
14 consistent with the requirements of subsection (a) of this section. If the
15 Governor determines that the order is not consistent with the requirements of
16 subsection (a) of this section, the Governor shall take all necessary and
17 appropriate actions to prevent the Vermont National Guard from being placed
18 on federal active duty.

19 (c) Within 30 days after completing a review pursuant to subsection (b) of
20 this section, the Governor shall report to the House Committee on Government
21 Operations and Military Affairs and the Senate Committee on Government

1 Operations. The report shall summarize the review, including the decision
2 reached, the reasoning for the decision, and any action the Governor has taken
3 or proposes to take based on the review.

4 (d) As used in this section:

5 (1) “Active duty combat” means:

6 (A) participation in an armed conflict;

7 (B) performance of hazardous service in relation to an armed conflict
8 in a foreign state; or

9 (C) performance of duty through an instrumentality of war.

10 (2) “Instrumentality of war” means a vehicle, vessel, device, or other
11 equipment designated primarily for military purposes that is in use by a
12 military service.

13 (3) “Official declaration of war” means an official declaration of war
14 made by the U.S. Congress pursuant to Article I, Section 8, Clause 11 of the
15 U.S. Constitution.

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

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

19 If the Governor determines that an order reviewed pursuant to section 370
20 of this chapter was not consistent with the requirements of subsection (a) of
21 that section, the Attorney General shall represent the Governor in any State or

1 federal court with jurisdiction over the placement of the Vermont National
2 Guard on federal active duty status and may take any legal action necessary to
3 prevent the placement of the Vermont National Guard on federal active duty
4 status.

5 Sec. 5. EFFECTIVE DATE

6 This act shall take effect on July 1, 2024.