

# Senate Finance Committee

*Deb Martone 271-4980*

**HB 104-FN**, relative to requiring an official declaration of war for the activation of the New Hampshire national guard in a foreign state.

**Hearing Date:** February 17, 2026

**Time Opened:** 2:15 p.m.

**Time Closed:** 2:57 p.m.

**Members of the Committee Present:** Senators Gray, Innis, Birdsell, Pearl, Lang, Rosenwald and Watters

**Members of the Committee Absent:** Senator Carson

**Bill Analysis:** This bill limits the activation of the New Hampshire national guard to only those times where the United States Congress has passed an official action pursuant to Article I, Section 8 of the United States Constitution.

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**Sponsors:**

Rep. Tom Mannion

Rep. Granger

Rep. Potucek

Rep. Pauer

Rep. Read

Rep. Wheeler

Rep. Sabourin

Rep. H. Howard

Rep. Rollins

Sen. Sullivan

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**Who supports the bill:** Please see Senate Finance Committee Legislative Aide, Deb Martone, for complete listing of individuals in support of HB 104-FN.

**Who opposes the bill:** Major General David Mikolaities; Kevin Grady; Leo Paquin; Nicole Desilets-Bixler;

**Who is neutral on the bill:** Chris Forsberg;

**Summary of testimony presented in support:**

Representative Tom Mannion:

- Representative Mannion is a United States Marine Corps infantry combat veteran with two deployments in Operation Iraqi Freedom.
- HB 104-FN requires Congress to formally declare war pursuant to Article 1, Section 8, Clause 11 of the United States Constitution, before we will release our National Guard to Title 10 service for deployments to a foreign combat zone.
- It does not prevent activation for any other purpose, including constitutionally prescribed functions in Clause 15 to execute the laws of the union, suppress insurrection, and repel invasions. It does not stop emergency response nor overseas training.

- Our nation has not followed the Constitution since 1942.
- War declarations have been supplanted by authorizations for use of military force which have allowed Presidents of the last 10 administrations to act unilaterally overseas.
- As James Madison said, "In no part of the Constitution is more wisdom to be found than in the clause which confides the question of war or peace to the legislature and not to the executive department." And yet, Congress has abdicated its responsibility for decades without a constitutional amendment to do so.
- The reason this act continues to be filed in over 30 states every term is because of the lives lost, not just in combat, but also here at home. When Hurricane Katrina tore through New Orleans, the bulk of Louisiana's 256th Infantry Brigade and Mississippi's 155th Armored Brigade were deployed to Iraq with most of their equipment. Lieutenant General Blum of the National Guard Bureau cited these missing units and equipment as significantly hindering early search and rescue efforts, costing many American lives in the critical early days of the hurricane.
- This issue crops up over and over throughout the last 20 years. Shortly before Hurricane Helen ripped through Appalachia, 700 soldiers from Tennessee's 278th Armored Cavalry Regiment were deployed to the Middle East.
- Previous testimony included, "We're going to lose funding. We're going to lose aircraft. We're going to lose tarmac."
- Sergeants Edgar Brian Torres Tovar and Williams Nathaniel Howard of the Iowa National Guard lost their lives on December 13th in Palmyra, Syria. The first question Representative Mannion saw all over social media was why is the National Guard in Syria? We didn't declare war on Syria. We never even passed an AUMF for Syria. But still we sent men to these areas without any formal declaration of war with no end in sight.
- Congress has assured there is no funding threat. The funding has to be approved by Congress. They control the purse strings. We have Congressmen on one hand saying there is no funding threat.
- HB 104-FN will not go into effect until four other states pass it.

Representative Jonah Orion Wheeler:

- Representative Wheeler is in favor of following the United States Constitution.
- The United States has been engaged in military conflicts, some would call them a war, without the official declaration of war since 1942. That has included Korea, Vietnam, Syria, Lebanon, Iraq and many more countries, which have been decimated by actions taken by this government without the constitutional authority of the United States Congress.
- What can we the people do about the fact that the federal government of these United States is seemingly not paying any attention to its founding documents? What we can do is go to our state legislators who have the power over the National Guard men and women who are serving our state, and declare these men and women will not be used in unconstitutional, some would call illegal wars.

- This isn't from the peaceniks of those students in the Vietnam era or the hippies of the past anti-war movements that we have seen. This is from soldiers who have fought and died in these illegal wars. Those who remember the brothers and sisters they brought home in body bags.
- Representative Mannion wants this country to follow its constitutional obligations. It does not help us on the world stage to be fighting immoral, illegal wars. It has actually demolished our national security on the world stage and made us the war machine of the world. If that's what the United States wants to be, then that's what the United States can be. But that is not the moral superiority which is talked about in many foreign policy discussions our country has.
- When Representative Wheeler speaks to Representative Mannion and other state representatives who have served in wars like Vietnam and Desert Storm, he thinks about the military actions they undertook, and the fact that they've fought here in this Legislature for a long time urging the United States to follow its Constitution.
- Representative Wheeler is not scared of the threat by the military-industrial complex of removal of funds. Those funds are not going to be removed.
- Ultimately, the lives of these soldiers are not the military equipment, the tarmac, the guns, and the weaponry. What is important is the lives of these soldiers, who are fighting and dying for our country in wars that are illegally authorized.

Aubrey Freedman:

- It is Mr. Freedman's belief that the fiscal note to HB 104-FN is conflating Title 32 with Title 10. Title 32 is supposed to be for when the New Hampshire Guard or any Guard is working domestically in its own state or in the other states of the United States. We're talking domestic.
- In Title 32 the President does have the power to take back money. But again, we're talking domestic.
- Title 10 is for deployment overseas. That is what this bill is talking about, deploying overseas. That is under the authority of the President. Mr. Freedman does not see anything in Title 10 which gives the President the authority to take back money if the Guard doesn't perform what it is supposed to do.
- Congress does have the power of the purse.
- The Impoundment Control Act of 1974 does not allow the Executive Branch to claw back money that's been appropriated by Congress. Only Congress can do that by rescission. They actually did it last year.
- Congress loves the military. As high as budgets are, Congress is in the habit of adding more money to the military budget. They're not going to cut back that budget. This is a scare tactic that's used.
- Regarding the additional language about adding four states who might enact similar legislation, that is an improvement to the bill. New Hampshire may be subject to retaliation being the only state; there is safety in numbers.
- The risk of defunding the \$395 million is just not going to happen.

Eric Brakey:

- Mr. Brakey is a retired, three-term State Senator from Maine, and is the Executive Director of the New Hampshire Free State Project. He is testifying on his own behalf.
- HB 104-FN is known as the Defend the Guard Act.
- Mr. Brakey quoted Daniel Webster, "It will be the solemn duty of state governments to protect their own authority over their own militia and are interposed between their citizens at arbitrary power wielded by the federal government." That is exactly what this legislation is seeking to do. It is seeking to follow through on a duty that the state governments have to defend their National Guard troops from the arbitrary authority and the misuse of them by the federal government.
- This situation of undeclared foreign wars has gone on for almost a century. But since the dawn of the war on terror 25 years ago, we've been in a unique situation with National Guard troops. For the last 25 years, National Guard troops from various different states have accounted for almost half of the troops on the ground in these foreign wars, which was never the original vision for what the National Guard was supposed to be. This has come at a tremendous toll to our military men and women. It has come at a tremendous toll to their families and to taxpayers. The only tangible benefit that seems to have come from this is that certain military-industrial complex contractors have gotten very rich off the situation.
- The Constitution is pretty clear about which branch of government has the power to declare war and the responsibility to declare war. It is the Legislative Branch.
- The executive branch has the most to gain from war and, therefore, is the most prone to it.
- The problem is no one in Congress wants to vote on war because they would like to continue to receive contributions from those who profit off of war, without having to go on record and be held accountable by their constituents in election season.
- We're in a catch 22 situation where Congress will not take responsibility as they're constitutionally obligated to do. Therefore, it falls to state legislators to defend their National Guard troops.
- The militia clause of the US Constitution is very clear that the state militias, the state National Guards can be mobilized for war purposes to suppress insurrection, to repel invasion and to enforce the laws of the union.
- National Guard troops have been deployed in Syria and recently were killed. The mission was not to repel an invasion, but to conduct an invasion. The mission was not to suppress an insurrection but to ferment one. In Syria, we literally put al-Qaeda in charge of the government and called it a victory.
- How much money is it worth when we're talking about the lives of our soldiers in wars that Congress doesn't even care enough to vote on and articulate a clear mission for?
- There was a legal memo published several years back by the West Virginia ACLU outlining the legal protections that are in place when we talk about these

threats to state funding from the federal government. It's mostly a paper tiger threat.

### **Summary of testimony presented in opposition:**

#### Major General David Mikolaities, Adjutant General, New Hampshire National Guard and Commissioner, Department of Military Affairs and Veteran Services:

- This is not the venue to discuss just or unjust wars. As combat veteran of three deployments in Iraq and Afghanistan. Major General Mikolaities knows the cost of conflict.
- Congress has not abdicated its war powers responsibility. It signed the authorization and use of military force, which allows any president of any political party to do what he thinks is in our country's national interest. If you have a problem with Congress, take it up with them. The New Hampshire State House is not the venue for this.
- The Governor does not get a vote if Congress or the President says, "I'm activating you in Title 10 involuntary activation for a conflict." The Governor or this body does not have the authority to override federal supremacy law.
- Major General Mikolaities cited 3 specific cases within the last 5 years where either Congress, the Secretary of War, or the National Guard Bureau has threatened to take a state's funding. In 2021, during the COVID response, the Oklahoma Governor wrote a letter to the Secretary of Defense saying, "I do not want my Oklahoma National Guard members to be vaccinated with the COVID vaccine." The Secretary of Defense responded, "No." It went to court and the court said it will remove the federal funding for training dollars of the service members that didn't get vaccinated.
- The next issue was in 2025, the National Defense Authorization Act. Seven states in one territory have Air National Guard units performing a space mission for the Space Force. The National Guard wanted to have a space National Guard. What happened? The former Secretary of the Air Force sought to change the law that took units from the Air National Guard out of a state without a Governor's consent.
- If we think we can say, "Hey federal government, we don't want to play. You can't touch our unit or our federal funding," think again. The National Defense Authorization Act of 2025 with the Secretary of the Air Force took over 600 positions from 7 states in a territory without a Governor's consent.
- The third example occurred in September of 2025. The current administration issued an executive order to keep Washington, DC safe and beautiful. Subsequent to that, the Secretary of War wrote a memo that specified as you stand up a National Guard Quick Reaction Force you must adhere to certain training with specific requirements. If you don't, your federal funding will be in jeopardy.
- What is the National Guard? The National Guard's primary purpose is to act as a combat reserve of the United States Army and Air Force. That is why we have HIMAR's high mobility artillery rocket systems. That is why we have the KC 46

- Refueler. Those 12 airplanes cost over \$3 billion and provide us with airmen at the Pease Air National Guard base. The 15 other Air National Guard wings in the country with the Eisenhower-era KC 135 want the refuelers as well.
- The fight is with Congress, not in the New Hampshire State House.
- The federal supremacy law says you cannot override what Congress or the President tells you to do.
- This bill will result in the loss of federal funding, which is the equipment provided to our soldiers. You don't train in readiness for a domestic operation mission. You train in readiness for a wartime mission. The Guard's pay, allowance, all of its equipment, and maintenance is 100 percent federally reimbursed.
- Senator Birdsell heard Congress would not defund the National Guard. She inquired if it is true that Congress actually funds the National Guard Bureau, and that it is the Bureau that dictates who gets the money or can pull the money back. Major General Mikolaities agreed. Senator Birdsell wondered if this bill is passed, would the hands of Congress be wiped clean as they appropriated the money. It's the National Guard Bureau that is going to pull the money back. Again, Major General Mikolaities agreed. What we're essentially saying is we don't want to do our federal mission, but that is what we're funded for. Senator Birdsell asked how many states have passed this legislation. Major General Mikolaities replied zero.
- Senator Watters requested the Major General elaborate a bit further on how essential the refueling operation is, and if duty calls for national defense you have to be ready to go. Major General Mikolaities stated it's critical. For example, the recent incident in Venezuela; the Vermont National Guard was involved with that. You don't know when your nation is going to call, whether it's combat aircraft or air mobility command, which is transports or refuelers. It is primarily a Title 10 mission to support whatever contingency or emergency operation that could be ongoing throughout the globe. Senator Watters acknowledged there's been a lot of discussion of money. Wouldn't it be fair to say people serving in the Guard who have answered the call of duty and served, some of whom have fallen and paid the ultimate sacrifice, they weren't doing it because they were worried about New Hampshire losing funding. They were doing it because of their patriotism and following the constitutional call of their Commander-in-Chief. Wouldn't that be the case? Major General Mikolaities agreed. The number one reason people have joined is a sense of service or purpose to something bigger and better than themselves.
- Senator Lang inquired if the Commander-in-Chief is defined in statute as the chief leader of the active, federal, military forces. Major General Mikolaities replied yes. Senator Lang sought confirmation when the President as part of his Commander-in-Chief role federalizes the National Guard, there is no role for the Governor anywhere in the Constitution. Major General Mikolaities assured Senator Lang he was correct. It is Senator Lang's understanding that when talking about a declaration of war there have been court cases, and if Congress funds an activity of the military that is the equivalency of a declaration of war, or if they fund an activity in a foreign country and they provide the financial

resources for the military to engage in same, that is the equivalency of an active war. Major General Mikolaities thinks generally speaking, it's really just the activation piece of it. If the President says you're involuntary activated or immobilized, there is no recourse.

- Senator Gray explained he was at a briefing in Washington DC with the Lieutenant General and sought confirmation that the Lieutenant General, in his discretion doling out money that has been appropriated, does so in a manner whereby the mission of the Guard will be advanced. And if some state decided not to participate, it would influence his decision on the appropriation of those monies. Major General Mikolaities agreed. The National Guard is a combat reserve. Many resources have been put into the reserve component, both in the National Guard and the reserves.

Kevin Grady, State Veterans Advisory Committee:

- The venue for this fight is the US Congress. It's not here at the state level.
- Title 10, US Code 12301, Paragraph F says when the National Command Authority activates troops, the Governor cannot object. Mr. Grady takes that to mean the state can't object on behalf of its Governor.
- The National Guard is one of the great deals for American taxpayers. You have a Title 32 mission, which is doing things for the state, and allows a ready reserve of personnel. If you're the federal government and that unit has a search and rescue mission, it doesn't get any better for realistic training than actually doing a real live search and rescue mission. That gets funded.
- Most of the money spent on our Guard comes from the federal government. It comes through the state and then it gets rerouted to the National Command Authority. They have the ability to activate forces.
- We have a very good relationship on planned deployments. Events where people are going out of town are worked years in advance.
- The money flows to the Service Secretary from the Secretary of Defense. It then flows down to the individual services, and they portion off a section for the Guard. The National Guard Bureau runs that money.
- We keep talking about the loss of revenue. It's not that they're going to take money out of the budget. They're just going to move it somewhere else. They're going to take those forces and move them somewhere else. There are fighter pilots all over the Air Force flying F-16s. They would love to be flying the F-35s that Vermont personnel are flying in the Guard. There are captains all over our Air Force right now that are flying a 70-year-old Airframe. They would love to be flying our KC 46s. And there's an active duty squadron right alongside our Guard folks training interoperability every day doing a real world mission. That's very important.
- Real world missions could easily take place from Portland or Cape Cod. It takes money to move forces.
- We haven't declared war since 1942. The last people we declared war against were Bulgaria, Romania, and Hungary. At that time in World War II, we went on a wartime footing in the United States. We went on this wartime economy. We asked people to make stuff that they didn't want to make to support the war effort. We don't need to do that anymore.

- Mr. Grady believes Congress has declared war for the last time. He thinks the AUMF is the way they're going to operate going forward.
- The way to achieve the intent of this legislation is to conquer the political will in DC.
- The President says, "I want you to activate your troops." The Governor says, "Sit in your chair. Do nothing." Major General Mikolaities says, "Oh, we've got state law." Senator Lang asked what would happen in this instance? Mr. Grady indicated more than likely the forces are going to pass through to wherever they're being activated to, and they would be under the command of someone else.

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Date Hearing Report completed: February 20, 2026