

HB 104-FN - AS INTRODUCED

2025 SESSION

25-0015

06/05

HOUSE BILL **104-FN**

AN ACT relative to requiring an official declaration of war for the activation of the New Hampshire national guard in a foreign state.

SPONSORS: Rep. Tom Mannion, Hills. 1; Rep. Granger, Straf. 2; Rep. Potucek, Rock. 13; Rep. Pauer, Hills. 36; Rep. Read, Rock. 10; Rep. Wheeler, Hills. 33; Rep. Sabourin, Rock. 30; Rep. H. Howard, Straf. 4; Rep. Seidel, Hills. 29; Rep. Rollins, Sull. 3; Sen. Sullivan, Dist 18

COMMITTEE: State-Federal Relations and Veterans Affairs

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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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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Five*

AN ACT relative to requiring an official declaration of war for the activation of the New Hampshire national guard in a foreign state.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Declaration of Purpose. This act follows the principles that guided the writers of our inspired  
2 Constitution, embodied in the United States Constitution and the writings of the founders. Article I,  
3 Section 8 of the United States Constitution vests in the Congress the exclusive power to declare war,  
4 and by abdicating the war powers to the executive branch, the United States Congress has failed to  
5 follow the United States Constitution and the intent of the founders.

6 2 New Section; Department of Military Affairs and Veterans Services; Deploying National  
7 Guard Into Active National Service. Amend RSA 110-B by inserting after section 5 the following  
8 new section:

9 110-B:5-a Deploying National Guard Into Active National Service.

10 I. This section shall be known as the "Defend the Guard Act".

11 II. For the purposes of this section:

12 (a) "Active duty combat" means performing the following services in the active federal  
13 military service of the United States:

14 (1) Participation in an armed conflict in a foreign state under Title 10 of the United  
15 States Code; or

16 (2) Performance of a hazardous service through an instrumentality of war relating to  
17 an armed conflict in a foreign state under Title 10 of the United States Code.

18 (b) "Official declaration of war" means an official declaration of war made by the United  
19 States Congress pursuant to Article I, Section 8, Clause 11 of the United States Constitution.

20 III. Notwithstanding any other provisions of New Hampshire law, the New Hampshire  
21 national guard and any member thereof shall not be released from the state into active duty combat  
22 unless the United States Congress has passed an official declaration of war or has taken an official  
23 action pursuant to Article I, Section 8, Clause 15 of the United States Constitution to explicitly call  
24 forth the New Hampshire national guard and any member thereof for the enumerated purposes to  
25 expressly execute the laws of the union, repel an invasion, or suppress an insurrection. The  
26 governor shall take all actions necessary to comply with the requirements of this section.

27 IV. Nothing in this section shall limit or prohibit the governor from consenting to the  
28 deployment of any New Hampshire national guard member under Title 32 of the United States  
29 Code.

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1           V. Nothing in this section shall limit nor prohibit the participation of the New Hampshire  
2 national guard in training exercises outside of the continental United States under Title 10 of the  
3 United States Code or in training with friendly foreign countries under 10 U.S.C. section 321.

4           VI. Nothing in this section shall limit or prohibit the participation of the New Hampshire  
5 national guard in the capacity of humanitarian and civic assistance provided in conjunction with  
6 military operations pursuant to 10 U.S.C. section 401.

7           3 Effective Date. This act shall take effect 60 days after its passage.

**HB 104-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to requiring an official declaration of war for the activation of the New Hampshire national guard.

**FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.**

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
<b>Revenue</b>	\$0	(\$55,000,000)	(\$55,000,000)	(\$55,000,000)
<i>Revenue Fund(s)</i>	Federal Revenue			
<b>Expenditures*</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<i>Funding Source(s)</i>	Decreased federally funded expenditures and increased general funds expenditures.			
<b>Appropriations*</b>	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

\*Expenditure = Cost of bill

\*Appropriation = Authorized funding to cover cost of bill

**METHODOLOGY:**

This bill would prohibit the Governor from releasing any New Hampshire National Guard (NHNG) member from the state onto Title 10 Active Duty for overseas combat missions unless the US Congress has passed an official declaration of war or take action pursuant to Article I, Section 8, Clause 15 of the U. S. Constitution. The Department of Military Affairs and Veterans Services states, if passed, this legislation would put at risk \$395 million in federal funding annually. Of this amount about \$55 million is included in the state operating and capital budgets as presented in the table above. These funds support the operations and maintenance of the NHNG. To maintain the current levels of operational capability, the State would need to replace the federal funds. The costs include but are not limited to the operation and maintenance of military equipment, major weapons systems, pay, allowances and benefits, and facility operations, maintenance and construction.

The National Guard is called to active duty under several provisions in Title 10 of the U.S. Code. 10 USC §12301(f) states, “The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.” 10 USC §12301(a), the specific section of Title 10 that National

Guard members are called to duty for combat tours, does not require the consent of the Governor. As such, this bill, if passed, would create a conflict between State and Federal laws. Failing to comply with 10 USC §12301, would bring 32 USC §108 into the risk equation. This section holds that failing to comply with the requirements of law, federal funding can be withheld. Specifically, 32 USC §108 states “If, within a time fixed by the President, a State fails to comply with a requirement of this title, or a regulation prescribed under this title, the National Guard of that State is barred, in whole or in part, as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.” The U.S. Congress has not formally declared war since World War II in 1941. In the past 80 years, Congress has passed legislation either authorizing use of military force or approving the President’s use of force. Regarding current and recent overseas military operations, in 2001 Congress passed an Authorization to Use Military Force (AUMF)<sup>1</sup> after the 9/11/2001 attacks. The 2001 AUMF empowers the President to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the [9/11 terror attacks]” and to use that “necessary and appropriate force” to “prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” The 2001 AUMF has been the legal authorization used by Presidents to conduct military operations in Southeast Asia. Thus, Congress has authorized US combat activities against terrorist groups for the past 20 years, without a declaration of war.

The fiscal impact was determined by summing the federal funding allocated to the NHNG annually including funding accounted for in the state biennial budgets and federal funds not passed through the state (i.e. federal pay and benefits, equipment and operations and maintenance costs). Federal funding not included in state appropriations includes:

- Federal military and civilian pay estimated at \$200 million per year. This includes all benefits.
- Federal construction, operations and maintenance funding estimated at approximately \$140 million per year.

Federal funding included in state operating and capital budgets includes:

- \$33 million in federal funds for the operating budget per year,
- Approximately \$22 million in federal funds for the capital budget per year.

**AGENCIES CONTACTED:**

Department of Military Affairs and Veterans Services