HB 229-FN - AS AMENDED BY THE HOUSE

4Jan2024... 0045h

2023 SESSION

23-0325
06/08

HOUSE BILL ***229-FN***

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

SPONSORS: Rep. Potucek, Rock. 13; Rep. Adjutant, Graf. 16; Rep. Santonastaso, Ches. 18; Rep. Granger, Straf. 2; Rep. T. Mannion, Hills. 1

COMMITTEE: State-Federal Relations and Veterans Affairs

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

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

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

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

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

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

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

II. For the purposes of this section:

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

(1) Participation in an armed conflict under Title 10 of the United States Code; or

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

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

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

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

V. Nothing in this section shall limit nor prohibit the participation of the New Hampshire national guard in training exercises outside of the continental United States under Title 10 of the

United States Code or in training with friendly foreign countries as part of the State Partnership program under 10 U.S.C. section 321.

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

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

LBA
23-0325
Amended 1/12/24

HB 229-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2024-0045h)

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

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**
Appropriation	$0	$0	$0	$0
Revenue	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General Federal funds	[ ] Education	[ ] Highway	[X] Other -

METHODOLOGY:

This bill limits 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.

The Department of Military Affairs and Veterans Services states this bill, if passed, would put at risk approximately $395 million in annual federal funding that supports operations and maintenance of the New Hampshire National Guard (NHNG). In order to maintain current levels of operational capability, the state would need to replace those federal funds. Those costs include but are not limited to military equipment, major weapons systems, and personnel pay, allowances and benefits, and facility overhead, maintenance, and construction costs. This amount includes all funds accounted for in the state biennial budgets as well as federal funds not passed through the state budget such as federal pay and benefits, equipment and operations and maintenance costs.

Federal funding not included in state appropriations includes:

- Federal miliary and civilian pay and benefits estimated at $200 million per year.
- Federal construction, operations and maintenance funding estimated at approximately $140 million per year.

Federal funds included in state operating and capital budgets includes:

- $32.6 million in federal funds for the operating budget per year,

- Approximately $22 million in federal funds for the capital budget per year.

It is assumed that any fiscal impact would occur after FY 2024.

AGENCIES CONTACTED:

Department of Military Affairs and Veterans Services