

**THE COUNCIL OF STATE GOVERNMENTS
RESOLUTION IN SUPPORT OF THE GOVERNORS' POWER TO CONTROL
THE NATIONAL GUARD**

Resolution Summary

Section 1076 of the John Warner Defense Authorization Act expanded the president's authority to federalize the National Guard during certain emergencies and disasters. The president would be able to exercise such authority without a governor's consent. Specifically, the president would be allowed to employ the Armed Forces and the National Guard to restore public order in certain situations, namely in times of "natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident or other condition." The president would be required to notify Congress within 14 days of exercising such authority.

Section 1076, which was enacted in October 2006, as part of the Defense Authorization measure (Public Law 109-364) revised the Insurrection Act of 1807. The Insurrection Act empowered the president to use the U.S. military as a domestic police force when laws are not being enforced, or the rights of citizens are being denied due to insurrection, domestic violence or conspiracy.

Section 1076 of the Defense Authorization Act was made following Hurricane Katrina, after disputes between President Bush and Louisiana Gov. Kathleen Blanco over control of Guard units at the time of the hurricane. Generally, the National Guard is under state control with governors as commanders-in-chief, but National Guard units can be mobilized at any time by presidential order.

Section 1076 stands to potentially undermine governors' authority over the National Guard, which ultimately could place the safety and well being of citizens in jeopardy. These changes beg to question whether an individual governor or the president has primary responsibility during a domestic emergency.

Rep. Tom Davis (VA) has introduced legislation, H.R. 869, that would repeal the president's ability to federalize the National Guard for domestic law enforcement purposes during emergencies. The Davis legislation is supported by the National Guard Association, the Adjutants General of the United States and the Enlisted Association of the National Guard. In the Senate, Sen. Christopher Bond (MO) also introduced similar legislation, S. 513.

This resolution is meant to express The Council of State Government's support of the repeal of this provision in the Defense Authorization Act, and to also encourage discussion with governors pertaining to any potential changes in the control of the National Guard.

Additional Resource Information

CQ Article on Defense: January 3, 2007, "President's Post-Katrina Powers Go Too Far, Lawmakers From Both Parties Say"

National Guard: http://en.wikipedia.org/wiki/United_States_National_Guard

Senator Patrick Leahy Press Release: <http://leahy.senate.gov/press/200702/020707a.html>

*S. 513 (sponsored by Senator Leahy):

*H.R. 869 (introduced by Representative Tom Davis):

*Public Law 109-364 ("The John Warner Defense Authorization Act of 2007" -HR 5122):

All of the starred materials can be found under "2007 Spring Meeting" at:

<http://www.csg.org/policy/resolutions.aspx>

Insurrection Act:

http://www.law.cornell.edu/uscode/html/uscode10/usc_sec_10_00000331----000-.html

National Governors Association National Guard Policy Statement:

<http://www.nga.org/portal/site/nga/menuitem.8358ec82f5b198d18a278110501010a0/?vgnextoid=24ca9e2f1b091010VgnVCM1000001a01010aRCRD&vgnextchannel=4b18f074f0d9ff00VgnVCM1000001a01010aRCRD>

Resolution in Support of the Governors' Power to Control the National Guard

Management Directive #1: Support state efforts to raise awareness of the potential changes and ramifications made to Section 1076 of the John Warner Defense Authorization Act.

Management Directive #2: Support and encourage state policy actions that will keep Governors as commanders-in-chief of their state National Guard units.

Management Directive #3: CSG staff will post approved resolution on CSG's Web site and make available through its regular communication venues at the state and local level to ensure its distribution to the state government and policy community.

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WHEREAS, Section 1076 of the John Warner National Defense Authorization Act (P.L. 109-364) unnecessarily expands the President's authority over the National Guard; and

WHEREAS, Section 1076 does not require the President to confer with a Governor prior to deploying a state's National Guard forces; and

WHEREAS, these changes could lead to confusion as to who is in charge of leading the Guard in times of an emergency; and

WHEREAS, Governors should remain as commanders-in-chief of the National Guard to assure the safety and well being of residents. The power to employ the National Guard should rest primarily with Governors; and

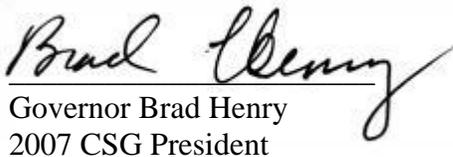
WHEREAS, any changes pertaining to the control of the National Guard should be made in consultation with Governors to allow for full discussion and debate on the ramifications of such changes in emergency response.

BE IT THEREFORE RESOLVED, that The Council of State Governments supports the passage of S. 513 and H.R. 869 which repeal Section 1076 of the 2006 National Defense Authorization Act.

BE IT THEREFORE FURTHER RESOLVED, that The Council of State Governments supports the proposition that Governors should control the domestic use of federal military forces operating within their respective state or territory, and should retain control over the domestic use of their own National Guard forces and supporting National Guard forces from other states operating within the supported Governor's state or territory, in all but two instances: (1) if the application of lethal military force is required to repel an invasion or attack against the United States; and/or (2) if National Guard forces in state active duty or Title 32 status are being used to resist a lawful order of the executive or judicial branch of the federal government. In these two instances, federal activation of a Governor's National Guard forces under Title 10 USC for domestic operations should be authorized.

BE IT THEREFORE FURTHER RESOLVED, that in instances where military forces in both Title 10 and Title 32 status are engaged in domestic operations within a state or territory, Governors believe a Dual Status National Guard commander should be appointed by the respective Governor and the President pursuant to 32 USC Section 325; and the Dual Status National Guard commander should be in command of all active, Guard, and reserve military personnel deployed to or within the state in support of or in response to the domestic event or emergency.

Adopted this 13th day of June 2007, at the
CSG 2007 Spring Committee & Task Force Meetings
in Puerto Rico


Governor Brad Henry
2007 CSG President


Representative Deborah Hudson
2007 CSG Chair