

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 206

To amend title 32, United States Code, to improve the readiness of State defense forces and to increase military coordination for homeland security between the States and the Department of Defense.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. WILSON of South Carolina (for himself and Mrs. MYRICK) introduced the following bill; which was referred to the Committee on Armed Services

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## A BILL

To amend title 32, United States Code, to improve the readiness of State defense forces and to increase military coordination for homeland security between the States and the Department of Defense.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “State Defense Force  
5       Improvement Act”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) Domestic threats to national security and  
2 the increased use of National Guard forces for out-  
3 of-State deployments greatly increase the potential  
4 for service by members of State defense forces estab-  
5 lished under section 109(c) of title 32, United States  
6 Code.

7           (2) The efficacy of State defense forces is im-  
8 peded by lack of clarity in the Federal regulations  
9 concerning those forces, particularly in defining lev-  
10 els of coordination and cooperation between those  
11 forces and the Departments of Defense and Home-  
12 land Security.

13           (3) The State defense forces suffer from lack of  
14 standardized military training, arms, equipment,  
15 support, and coordination with the Departments of  
16 Defense and Homeland Security and other Federal  
17 agencies as a result of real and perceived Federal  
18 regulatory impediments.

19 **SEC. 3. RECOGNITION OF AND SUPPORT FOR STATE DE-**  
20 **FENSE FORCES.**

21           (a) RECOGNITION AND SUPPORT.—Section 109 of  
22 title 32, United States Code, is amended—

23           (1) by redesignating subsections (d) and (e) as  
24 subsections (l) and (m), respectively; and

1           (2) by inserting after subsection (c) the fol-  
2           lowing new subsections:

3           “(d) RECOGNITION.—Congress hereby recognizes  
4 forces established under subsection (c) as an integral mili-  
5 tary component of the homeland security effort of the  
6 United States, while reaffirming that those forces remain  
7 entirely State regulated, organized, and equipped and rec-  
8 ognizing that those forces will be used for homeland secu-  
9 rity purposes exclusively at the local level and in accord-  
10 ance with State law.

11          “(e) ASSISTANCE BY DEPARTMENT OF DEFENSE.—  
12 (1) The Secretary of Defense may coordinate homeland  
13 security efforts with, and provide assistance to, a defense  
14 force established under subsection (c) to the extent such  
15 assistance is requested by a State or by a force established  
16 under subsection (c) and subject to the provisions of this  
17 section.

18          “(2) The Secretary may not provide assistance under  
19 paragraph (1) if, in the judgment of the Secretary, such  
20 assistance would—

21               “(A) impede the ability of the Department of  
22               Defense to execute missions of the Department;

23               “(B) take resources away from warfighting  
24               units;

25               “(C) incur nonreimbursed identifiable costs; or

1           “(D) consume resources in a manner incon-  
2           sistent with the mission of the Department of De-  
3           fense.

4           “(f) ASSISTANCE BY DEPARTMENT OF HOMELAND  
5 SECURITY.—The Secretary of Homeland Security may co-  
6 ordinate homeland security efforts with, and provide as-  
7 sistance to, a defense force established under subsection  
8 (c) to the extent such assistance is requested by a State  
9 or by a force established under subsection (c) if so author-  
10 ized by State law, and subject to the provisions of this  
11 section.

12           “(g) USE OF DEPARTMENT OF DEFENSE PROPERTY  
13 AND EQUIPMENT.—The Secretary of Defense may author-  
14 ize qualified personnel of a force established under sub-  
15 section (c) to use and operate property, arms, equipment,  
16 and facilities of the Department of Defense as needed in  
17 the course of training activities and State active duty.

18           “(h) TRANSFER OF EXCESS EQUIPMENT.—(1) The  
19 Secretary of Defense may transfer to a State or a force  
20 established under subsection (c) any personal property of  
21 the Department of Defense that the Secretary determines  
22 is—

23           “(A) excess to the needs of the Department of  
24           Defense; and

1           “(B) suitable for use by a force established  
2           under subsection (c).

3           “(2) The Secretary of Defense may transfer personal  
4           property under this section only if—

5           “(A) the property is drawn from existing stocks  
6           of the Department of Defense;

7           “(B) the recipient force established under sub-  
8           section (c) accepts the property on an as-is, where-  
9           is basis;

10          “(C) the transfer is made without the expendi-  
11          ture of any funds available to the Department of  
12          Defense for the procurement of defense equipment;  
13          and

14          “(D) all costs incurred subsequent to the trans-  
15          fer of the property are borne or reimbursed by the  
16          recipient.

17          “(3) Subject to paragraph (2)(D), the Secretary may  
18          transfer personal property under this section without  
19          charge to the recipient force established under subsection  
20          (c).

21          “(i) FEDERAL/STATE TRAINING COORDINATION.—

22          (1) Participation by a force established under subsection  
23          (c) in a training program of the Department of Defense  
24          or Department of Homeland Security is at the discretion  
25          of the State.

1       “(2) Nothing in this section may be construed as re-  
2 quiring the Department of Defense or Department of  
3 Homeland Security to provide any training program to  
4 any such force.

5       “(3) Any such training program shall be conducted  
6 in accordance with an agreement between—

7           “(A) the Secretary of Defense or Secretary of  
8 Homeland Security, as the case may be; and

9           “(B) the State or the force established under  
10 subsection (c) if so authorized by State law.

11       “(4) Any direct costs to the Department of Defense  
12 of providing training assistance to a force established  
13 under subsection (c) shall be reimbursed by the State. Any  
14 agreement under paragraph (3) between the Department  
15 of Defense and a State or a force established under sub-  
16 section (c) for such training assistance shall provide for  
17 payment of such costs.

18       “(j) FEDERAL FUNDING OF STATE DEFENSE  
19 FORCES.—Funds available to the Department of Defense  
20 may not be made available to a State defense force.

21       “(k) LIABILITY.—Any liability for injuries or dam-  
22 ages incurred by a member of a force established under  
23 subsection (c) while engaged in training activities or State  
24 active duty shall be the sole responsibility of the State,  
25 regardless of whether the injury or damage was incurred

1 on United States property or involved United States  
2 equipment or whether the member was under direct super-  
3 vision of United States personnel at the time of the inci-  
4 dent.”.

5 (b) DEFINITION OF STATE.—

6 (1) DEFINITION.—Such section is further  
7 amended by adding at the end the following new  
8 subsection:

9 “(n) STATE DEFINED.—In this section, the term  
10 ‘State’ includes the District of Columbia, the Common-  
11 wealth of Puerto Rico, Guam, and the Virgin Islands.”.

12 (2) CONFORMING AMENDMENTS.—Such section  
13 is further amended in subsections (a), (b), and (c)  
14 by striking “a State, the Commonwealth of Puerto  
15 Rico, the District of Columbia, Guam, or the Virgin  
16 Islands” each place it appears and inserting “a  
17 State”.

18 (c) STYLISTIC AMENDMENTS.—Such section is fur-  
19 ther amended—

20 (1) in subsection (a), by inserting “PROHIBI-  
21 TION ON MAINTENANCE OF OTHER TROOPS.—”  
22 after “(a)”;

23 (2) in subsection (b), by inserting “USE WITH-  
24 IN STATE BORDERS.—” after “(b)”;

1           (3) in subsection (c), by inserting “STATE DE-  
2       FENSE FORCES AUTHORIZED.—” after “(c)”;

3           (4) in subsection (l), as redesignated by sub-  
4       section (a)(1), by inserting “EFFECT OF MEMBER-  
5       SHIP IN DEFENSE FORCES.—” after “(l)”; and

6           (5) in subsection (m), as redesignated by sub-  
7       section (a)(1), by inserting “PROHIBITION ON RE-  
8       SERVE COMPONENT MEMBERS JOINING DEFENSE  
9       FORCES.—” after “(m)”

10       (d) CLERICAL AMENDMENTS.—

11           (1) SECTION HEADING.—The heading of such  
12       section is amended to read as follows:

13       **“§ 109. Maintenance of other troops: State defense**  
14               **forces”.**

15           (2) CLERICAL AMENDMENT.—The item relating  
16       to such section in the table of sections at the begin-  
17       ning of chapter 1 of such title is amended to read  
18       as follows:

“109. Maintenance of other troops: State defense forces.”.

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