

1 H.376

2 Introduced by Representatives Chesnut-Tangerman of Middletown Springs,

3 Burrows of West Windsor, Cina of Burlington, Headrick of

4 Burlington, Logan of Burlington, Mulvaney-Stanak of

5 Burlington, and White of Bethel

6 Referred to Committee on

7 Date:

8 Subject: Internal security and public safety; National Guard; federal duty

9 Statement of purpose of bill as introduced: This bill proposes to require the
10 Governor to review every order to place a unit of the Vermont National Guard
11 in federal active duty status for service in a military conflict to determine
12 whether that order was issued pursuant to a Congressional authorization for the
13 use of military force.

14 An act relating to review of orders placing the Vermont National Guard in
15 federal active duty status

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. FINDINGS

18 The General Assembly finds that:

1 (1) Under Article I, Section 8, Clause 15 of the U.S. Constitution,
2 Congress may call forth “the Militia to execute the Laws of the Union,
3 suppress Insurrections and repel Invasions.”

4 (2) Since 1933, federal law has provided that persons enlisting in a state
5 Army National Guard unit or Air National Guard unit simultaneously enlist in
6 the Army National Guard of the United States, a reserve component of the U.S.
7 Army, or the Air National Guard of the United States, a reserve component of
8 the U.S. Air Force. The enlistees retain their status as state National Guard
9 members unless and until they are ordered to active duty in the National Guard
10 of the United States. Upon being relieved from federal active duty, they revert
11 to state National Guard status.

12 (3) Each state’s National Guard is controlled by its governor when it is
13 in state status. However, a state National Guard unit can be called up for
14 federal active duty by the President, provided that the President is acting
15 pursuant to the applicable provisions of the U.S. Constitution and federal law.

16 (4) The War Powers Act of 1973 (Public Law 93-148) specifically limits
17 the power of the President of the United States to wage war without the
18 approval of Congress.

1 Sec. 2. 20 V.S.A. § 370 is added to read:

2 § 370. GOVERNOR'S REVIEW OF FEDERAL DEPLOYMENT ORDERS
3 FOR VERMONT NATIONAL GUARD; AUTHORITY

4 (a)(1) The Governor shall review every federal order that places one or
5 more units of the Vermont National Guard on federal active duty status for
6 deployment outside the United States into an area of armed hostilities, or an
7 area where the Vermont National Guard is likely to be involved in armed
8 hostilities, to determine whether the order was issued pursuant to and is
9 consistent with either:

10 (A) a Congressional declaration of war; or

11 (B) a Congressional authorization for the use of military force.

12 (2) If the Governor determines that the order was not issued pursuant to
13 a Congressional declaration of war or authorization for the use of military
14 force, the Governor shall take all necessary and appropriate actions to prevent
15 all affected units of the Vermont National Guard from being placed on federal
16 active duty.

17 (b) Within 30 days after completing a review pursuant to subsection (a)(1)
18 of this section, the Governor shall report to the House Committee on
19 Government Operations and Military Affairs and the Senate Committee on
20 Government Operations. The report shall summarize the review, including the

1 decision reached, the reasoning for the decision, and any action the Governor
2 has taken or proposes to take based on the review.

3 Sec. 3. 20 V.S.A. § 371 is added to read:

4 § 371. ATTORNEY GENERAL; ACTION TO PREVENT DEPLOYMENT
5 OF VERMONT NATIONAL GUARD

6 If the Governor determines that an order reviewed pursuant to subsection
7 370(a) of this chapter was not issued pursuant to a Congressional declaration
8 of war or authorization for the use of military force, the Attorney General shall
9 represent the Governor in any State or federal court with jurisdiction over the
10 deployment of the Vermont National Guard and may take any legal action
11 necessary to prevent the deployment.

12 Sec. 4. 20 V.S.A. § 372 is added to read:

13 § 372. DECLARATION OF POLICY; VERMONT NATIONAL GUARD;
14 SERVICE IN MILITARY CONFLICT

15 It is the policy of the State of Vermont that the Vermont National
16 Guard shall only serve in federal active duty in an area of armed
17 hostilities, or an area where the Vermont National Guard is likely to be
18 involved in armed hostilities, if the Vermont National Guard is ordered
19 to such federal active duty pursuant to a Congressional declaration of
20 war or authorization for the use of military force that specifically

- 1 describes the mission or conflict in relation to which the Vermont
- 2 National Guard is being deployed.
- 3 Sec. 5. EFFECTIVE DATE
- 4 This act shall take effect on July 1, 2023.