

HJR

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# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### SPONSOR STATEMENT FOR CS HJR 11(STA) BY: Representative Bob Roses

**TITLE:** "Relating to the increased authority granted to the President of the United States to federalize the National Guard of the individual states without the consent of the governors; and urging the United States Congress to take action to honor the sovereignty of the individual states to regulate and command the National Guard of the states."

Congress of the United States passed the 439-page \$538 billion 2007 Defense Authorization Bill and the President of the United States signed it into law in October 2006.

The Posse Comitatus Act of 1878 forbids U.S. troops from being deployed on American soil for law enforcement. The one exception is provided by the Insurrection Act of 1807, which lets the president use the military only for the purpose of putting down rebellions or enforcing constitutional rights if state authorities fail to do so. Under that law, the president can declare an insurrection and call in the armed forces. The act has been invoked only a handful of times in the past 50 years, including in 1957 to desegregate schools and in 1992 during riots in south central Los Angeles after the acquittal of police accused of beating Rodney King.

Provisions within the Defense Authorization Bill changed the 200-year old Insurrection Act to empower the hand of the president in future stateside emergencies. Under the U.S. Constitution, each state's National Guard unit is controlled by the governor in time of peace but can be called up for federal duty by the president. The National Guard employs 444,000 part-time soldiers between its two branches: the Army and Air National Guards.

Congress changed the Insurrection Act to list "natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident" as conditions under which the president can deploy U.S. armed forces and federalize state Guard troops if he determines that "authorities of the state or possession are incapable of maintaining public order."

Clearly there will be a significant effect on Alaska and all the states by this expansion of Presidential authority over the National Guard during natural and manmade disasters and federal action is needed to reaffirm the sovereignty of the individual states to regulate and command their National Guard troops during emergencies and disasters.

I urge your support of this resolution.

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HJR 11  
 (H) Publish Date: 3/7/2007

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAA  
 Title STATE'S CONTROL OF NATIONAL GUARD RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Rep. Bob Roses Component No. \_\_\_\_\_  
 Requester Rep. Bob Roses

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This resolution will not result in additional costs to the Legislative Branch.

Prepared by: House Military & Veterans' Affairs Committee  
 Division \_\_\_\_\_  
 Approved by: Rep. Bob Roses - Chairman  
 Agency House Military & Veterans' Affairs Committee

Phone 465-4939  
 Date/Time 3/6/07 7:35 AM  
 Date 3/6/2007



PRINT

CLOSE

August 1, 2006

The Honorable Duncan Hunter  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Ike Skelton  
Ranking Member  
Committee on Armed Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman and Representative Skelton:

We write in opposition to a provision in the House-passed version of the National Defense Authorization (DoD) Act (H.R. 5122), which is about to be conferenced with the Senate-passed version, S. 2766. A provision in section 511 of the House-passed DoD Act would allow the President to federalize the National Guard of the states without the consent of the governor. Specifically, this clause amends Title 10 of the United States Code to give the President the authority to take control of the Guard in case of "a serious natural or manmade disaster, accident, or catastrophe that occurs in the United States, its territories and possessions, or Puerto Rico."

This provision is very open-ended without a definition of what constitutes a "serious" natural or manmade disaster. We understand that in case of a National Security incident where the state may have been incapacitated by an event, the President may need this power. However, he is granted this authority under the "insurrection act."

The possibility of the federal government pre-empting the authority of the state or governor in natural and manmade disasters is opposed by the nation's governors. We are responsible for the safety and welfare of our citizens and are in the best position to coordinate all resources to prepare for, respond to and recover from disasters. When federal aid is needed it should be coordinated by the governors.

The nation's governors feel very strongly about protecting our constitutional responsibility to take care of our citizens, and do not want that responsibility shifted to federal officials, as defined by a "serious" emergency. The current process works quite well where we use our National Guard in emergencies and ask for federal assistance as the need arises.

We urge you to drop this provision that would usurp governor's authority over the National Guard during emergencies from the conference agreement on the National Defense Authorization.

Sincerely,

Governor Mike Huckabee

Governor Janet Napolitano

NATIONAL  
**GOVERNORS**  
ASSOCIATION

Gov. Pawlenty  
Governor of Minnesota  
Chair

Tim Pawlenty  
Governor of Minnesota  
Vice Chair

Gregory J. Sisk  
Executive Director

August 31, 2006

The Honorable Donald Rumsfeld  
Secretary  
Department of Defense  
The Pentagon  
Washington, D.C. 20301

Dear Mr. Secretary:

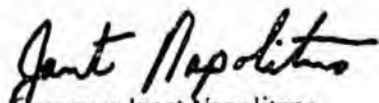
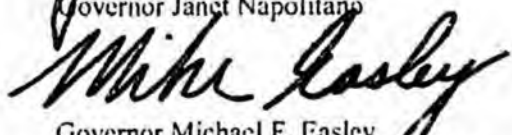
Governors oppose statutory changes in the House and Senate Department of Defense authorization bills to federalize the National Guard during emergencies and disasters. Provisions in both the House and Senate bills to expand the President's authority over the National Guard during natural and manmade disasters were developed without consultation with governors and encroach on our constitutional authority to protect the citizens of our states.


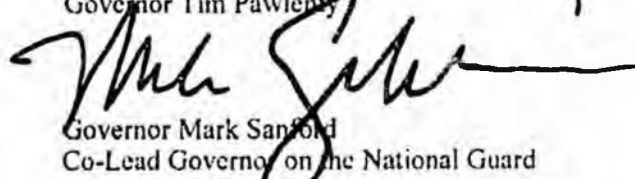
Fifty-one governors recently sent a letter to Congress opposing Section 511 of the House-passed bill because it would usurp the authority of governors to command the National Guard in response to a "serious natural or manmade disaster." Since then, governors also have become increasingly concerned with the Senate's proposal to expand the President's authority to intervene in a state under the Insurrection Act (Section 1042) and proposals to federalize disaster response through the use of reserve forces. Each of these proposals represents a dramatic expansion of federal authority during natural disasters that could cause confusion in the command-and-control of the National Guard and interfere with states' ability to respond to natural disasters within their borders.

As we reiterated during our meeting with you in February, any issue that affects the mission of the Guard in the states must be addressed in consultation and coordination with governors. The role of the Guard in the states and to the nation as a whole is too important to have major policy decisions made without full debate and input from governors throughout the policy process.

Governors welcome the opportunity to improve the nation's disaster response capabilities, but we must work together to ensure that any changes do not hinder our ability to respond to those in need. We therefore urge you to join us in calling for the House and Senate to remove Section 511 of the House bill and Section 1042 of the Senate bill from the final conference report.

Sincerely,

  
Governor Janet Napolitano  
  
Governor Michael F. Easley  
Co-Lead Governor on the National Guard

  
Governor Tim Pawlenty  
  
Governor Mark Sanford  
Co-Lead Governor on the National Guard

## Insurrection Act Point Paper

The Insurrection Act governs when the President can declare martial law. When the Act is invoked, the military, including the National Guard, can carry out law enforcement functions without the consent of a Governor. Posse comitatus, a broad law that generally prevents the military from policing within the domestic United States, does not apply when the act is invoked.

Under the old law, the President could invoke the Insurrection Act during violent situations that deprive a citizen of his or her rights. The ambiguity of the language put the emphasis against invoking the Act in situations other than a clear case of insurrection. The ambiguity also promoted consultation whenever a President might face the decision of wresting control of the Guard from governors and using the entire military as a federal police force. The Act has been invoked on only three occasions in the past five decades.

Under the new language, the President can invoke the act and declare martial law in cases where public order breaks down as a result of a natural disaster, epidemic, terrorist attack, or—very nebulously—“other conditions.” This change in the language creates clear triggers that almost make it automatic that the Act will be invoked during such an emergency. Erasing that friction and that constructive ambiguity is a major change that shifts the burden from the President and onto governors and everyone else who might oppose a President using the military in this way.

The recent changes make it easier to federalize the National Guard for domestic law enforcement, which does not make sense. Operating under the control of the governor in a state status, the Guard is not bound by posse comitatus and can integrate seamlessly with local, state, and federal law enforcement agencies and first responders.

The Governors were in no way consulted about the Insurrection Act Changed. They unanimously believe that the current system for using the National Guard in emergencies and requesting federal assistance “when necessary works well and should not be changed.”

To provide a real world example, with the new language, there is no doubt that Governor Blanco’s request against federalizing the Guard and using the military for law enforce would have been overruled. The federal government would have taken over the emergency effort and shunted her aside.

## TOP STORY IIII

FRIDAY, JANUARY 12, 2007

## Governors lose in power struggle over National Guard

By Kavan Peterson, Staff Writer

A little-noticed change in federal law packs an important change in who is in charge the next time a state is devastated by a disaster such as Hurricane Katrina.

To the dismay of the nation's governors, the White House now will be empowered to go over a governor's head and call up National Guard troops to aid a state in time of natural disasters or other public emergencies. Up to now, governors were the sole commanders in chief of citizen soldiers in local Guard units during emergencies within the state.

A conflict over who should control Guard units arose in the days after Hurricane Katrina in 2005. President Bush sought to federalize control of Guardsmen in Louisiana in the chaos after the hurricane, but Gov. Kathleen Blanco (D) refused to relinquish command.

Over objections from all 50 governors, Congress in October tweaked the 200-year-old Insurrection Act to empower the hand of the president in future stateside emergencies. In a letter to Congress, the governors called the change "a dramatic expansion of federal authority during natural disasters that could cause confusion in the command-and-control of the National Guard and interfere with states' ability to respond to natural disasters within their borders."

The change adds to tensions between governors and the White House after more than four years of heavy federal deployment of state-based Guard forces to fight in Iraq and Afghanistan. Since the 2001 terrorist attacks, four out of five guardsmen have been sent overseas in the largest deployment of the National Guard since World War II. Shortage of the Guard's military equipment – such as helicopters to drop hay to snow-stranded cattle in Colorado – also is a nagging issue as much of units' heavy equipment is left overseas and unavailable in case of a natural disaster at home.

A bipartisan majority of both chambers of Congress adopted the change as part of the 439-page, \$538 billion 2007 Defense Authorization Bill signed into law last October.

The nation's governors through the National Governors Association (NGA) successfully lobbied to defeat a broader proposal to give the president power to federalize Guard troops without invoking the Insurrection Act. But the passage that became law also "disappointed" governors because it expands federal power and could cause confusion between state and federal authorities trying to respond to an emergency situation, said David Quam, an NGA homeland security advisor.

"Governors need to be focused on assisting their citizens during an emergency instead of looking over their shoulders to see if the federal government is going to step in," Quam said.

Under the U.S. Constitution, each state's National Guard unit is controlled by the governor in time of peace but can be called up for federal duty by the president. The National Guard employs 444,000 part-time soldiers between its two branches: the Army and Air National Guards.

The Posse Comitatus Act of 1878 forbids U.S. troops from being deployed on American soil for law enforcement. The one exception is provided by the Insurrection Act of 1807, which lets the president use the military only for the purpose of putting down rebellions or enforcing constitutional rights if state authorities fail to do so. Under that law, the president can declare an insurrection and call in the armed forces. The act has been invoked only a handful of times in the past 50 years, including in 1957 to desegregate schools and in 1992 during riots in south central Los Angeles after the acquittal of police accused of beating Rodney King.

Congress changed the Insurrection Act to list "natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident" as conditions under which the president can deploy U.S. armed forces and federalize state Guard troops if he determines that "authorities of the state or possession are incapable of maintaining public order."

Backers of the new rules, including U.S. Sens. John W. Warner (R-Va.) and Edward Kennedy (D-Mass.) said the changes were needed to clarify the role of the armed forces in responding to serious domestic emergencies.

Mark Smith, spokesperson for the Louisiana Governor's Office of Homeland Security and Emergency Preparedness, said local and state emergency responders know what their communities need during a crisis better than officials in Washington.

"The president should not be able to step in and take control of the National Guard without a governor's consent. The Guard belongs to the states, has always belonged to the states and should remain a function of the states," Smith said.

*Send your comments on this story to [letters@stateline.org](mailto:letters@stateline.org). Selected reader feedback will be posted in the Letters to the editor section.*

Contact Kavan Peterson at [kpeterson@stateline.org](mailto:kpeterson@stateline.org).

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## COMMENTS ▮▮▮

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### Governors Lose power struggle for National Guard

By Louis (Lou) Freitag on Jan 12, 2007 3:02:14 PM

The 10th ((Tenth) Amendment has been voided for the state national guard units to be taken away from the states. The presidency is making up their own law as they see fit and are breaking the law/laws to their own advantage.

Are our government people so ignorant they don't know that which they are creating? is Congress as

ignorant of the Constitution, Bill of Rights and spirit of the Declaration of Independence that they are willing to revert to a caste system for we the people?

We impeached the previous president because he lied of an affair with a 24 year old intern and let this president # 43 run the government as a family corporation. Are we on the verge of losing 50 different state constitutions to a big constitution in the country, made up anew?

Lou lfreitag@mchsi.com

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**Governors Lose in Power Struggle Over National Guard**

By Rael Nidess, M.D. on Jan 12, 2007 7:45:30 PM

Hello?

Where've ya'll been?

Bush foisted his "unitary executive" theory onto the 2006 Defense Appropriations Bill in collusion with unthinking Democrats and craven Republicans who failed to read the fine print and understand that, due to this "accommodation" for the President's convenience, he now has unfettered power, by law, to utilize our own troops (the National Guard) for law enforcement on U.S. soil in violation of the Constitutional concept of Posse Comitatus.

This, along with the "Military Commissions Act of 2006" (MCA2006) allows him to name any group of people, including citizens of the U.S.A., as either 'enemy combatants' or 'materially contributing toward terrorism', use our military to lock us up (perhaps if we protest his illegal war too vigorously?) without due process because our Habeas Corpus rights have been denied by MCA2006, and hold us, essentially incommunicado, "interrogating" us with "approved unusual methods", until... well until.

The sorry thing is that this all happened 6 months ago! Where the hell were the news stories then?

We've dug a hole that has only one way out:

Impeach Bush, Cheney, and Rice.

There's more to read at:

<http://www.impeachforpeacemarshall.org>

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**Governors Upset**

By Don Evans on Jan 16, 2007 5:45:37 PM

I think that if the governors understood that they are simply figure heads for the land of the Federal Government, they wouldn't be upset. Do any of them actually believe that the State is supreme to the Federal government. Not since the south lost the Civil war have states had the power conveyed by the Constitution and the 10th Amendment. If you don't believe that, why do you think it is now the State of Texas, State of New Mexico etc. and not the Texas State, etc?? All states are not part of the power of the District of Columbia. Still not certain, look at what Congress continues to pass, laws which violate the Constitution but they find cause under the Commerce clause and the Supreme Court backs them up!!

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**Nat'l Guard!!**

By Charles Legare on Jan 17, 2007 10:06:34 AM

The Governors should fight this change with every tool available to them. The Bush administration has proven time and time again they cannot be trusted, not only in Iraq, but in a multitude of other ways. The congress until recently ( and i'm still leery now) was a rubber stamp for the Bush bunch, and literally "Gave" away the "Outhouse" in fear of being labeled non-patriotic.

It's time for the people of the US to stand up before we are totally stripped of all our freedoms of Liberty and Justice. This "War against Terror", which so far is totally un-defined, has taken the citizens of the US back 200 plus years. With the words "My job is to protect the American people" Bushy Boy has stolen our freedoms from us with the help of the same people we elect to provide a stop-gap in these circumstances, The Congress of The United States!!!

The attacks against us on our soil , while terrible in there own right are nothing compared to what will happen if we go forward with the arrogance we have shown for the rest of the world. We have killed at a rate of more than a 100 to 1 the doers of evil who struck us that terrible blow on 9/11 , but now it's time to SECURE OUR BORDERS and withdraw.. If they come, whoever they are, we can and should kill them!!

Chuck Legare  
Orange Park Fl.

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**Governor's upset over loss of control of national guard after Katrina debacle**

*By warren gaston on Jan 17, 2007 2:34:08 PM*

If the governors of their respective states actually were working for their constituents, this would never have happened. It was absolutely conscienceless the way the governor of Louisiana treated the people of New Orleans. She had no plan of response to Katrina even with a weeks worth of notice. She deserved to be impeached and jailed for malfeasance of office. Instead the government was kind to her and simply took the matter to the next higher level.