AN ACT concerning Public Safety – National Guard Deployment – Governor’s Powers

SUMMARY

FOR the purpose of requiring the Governor to withhold or withdraw approval of the transfer of this State’s National Guard to federal control in the absence of an explicit authorization adopted by the Federal Government in pursuance of the powers delegated to the Federal Government in Article I, Section 8, Clause 15 of the U.S. Constitution.

A BILL ENTITLED __________

WHEREAS, Under the Constitution of the United States, each State’s National Guard is a defensive force controlled by the governor, but can be called up for federal duty by the federal government, provided that said duty is pursuant to the Constitution of the United States; and

WHEREAS, Article I, Section 8, Clause 15 of the Constitution of the United States delegates to the Congress the power to provide for “calling forth the militia” in three situations only: 1) to execute the laws of the union, 2) to suppress insurrections, and 3) to repel invasions; and

WHEREAS, James Monroe, member of the Virginia Ratifying Convention, 7th U.S. Secretary of State, and 5th President of the United States, wrote in 1815, “Congress shall have power to provide for calling forth the militia to execute the laws of the Union; what laws? All laws which may be constitutionally made” ; and

WHEREAS, the Tenth Amendment to the Constitution of the United States reads as follows: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” ; and

WHEREAS, the Tenth Amendment defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government in the Constitution of the United States; and

WHEREAS, Daniel Webster, in his 1814 speech on the floor of Congress, said, “The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State governments exist” ; now, therefore,
SECTION 1. BE IT ENACTED BY THE (GENERAL ASSEMBLY/HOUSE/SENATE) OF THE STATE OF (enter state), That the Laws of (enter state) read as follows: (enter section of state code here)

The Governor shall not release from this state into active duty combat, any member of the (STATE) National Guard unless the United States Congress has passed an Official Declaration of War or has explicitly called forth the (STATE) National Guard for any of the following three enumerated purposes in pursuance of Article I, Section 8, Clause 15 of the Constitution for the United States:

a) A military invasion of the United States, or
b) An insurrection, or
c) A calling forth of the Guard by the federal government in a manner provided for by Congress to execute the Laws of the Union, provided that said Laws were made in pursuance of the delegated powers in the Constitution of the United States.

Definitions. – 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;
2. Performance of a hazardous service in a foreign state; or
3. Performance of a duty through an instrumentality of war

(B) “Official declaration of war” means an official declaration of war made by the United States Congress pursuant to Article I, § 8, Clause 11 of the United States Constitution

SECTION 2. AND BE IT FURTHER ENACTED, That the governor shall examine every current federal order that has placed the (STATE) National Guard into Active duty combat to determine whether the order is authorized, as defined by Section 1 of this Act, according to Article I, Section 8, Clause 15 of the Constitution for the United States. If the governor determines that the order has not been made in accordance with the constitutional requirements cited in Section 1 of this Act, he or she shall take all actions necessary to immediately return those members of the (STATE) National Guard back to this state.

SECTION 3. AND BE IT FURTHER ENACTED, That the governor shall submit a report to the standing committees of the legislature with specified subject matter jurisdiction over military affairs, as provided
under (ENTER SECTION FROM STATE CODE), that summarizes his or her review of every order that placed or places the national guard on federal active duty and any action he or she takes in response to that review, within 30 days after his or her review is complete.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect (enter date).