

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HM 227 Control of Florida National Guard by Governor
SPONSOR(S): Economic Development & Community Affairs Policy Council and Adams and others
TIED BILLS: **IDEN./SIM. BILLS:** SM 480

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development & Community Affairs Policy Council	15 Y, 0 N, As CS	Fudge	Tinker
2)	Rules & Calendar Council			
3)	Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Council Substitute for House Memorial 227 urges the United States Congress to preserve the authority of the Governor to retain command and control of the Florida National Guard and reject any changes which would restrict or diminish the Governor’s ability to activate the Guard in time of emergency.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Article I, Section 8 of the United States Constitution provides for the organizing, arming, and disciplining of the militia and for governing such part of them as may be employed in service to the United States. Federal law governs the National Guard when called to active federal service¹ and while under the control of the state governor.² Specifically, it limits the power of the President to call the militia into federal service in time of insurrection³ and prohibits the use of federal troops for law enforcement purposes.⁴

The 2007 Defense Authorization Act amended the Insurrection Act to give the President the authority to employ the armed forces, including the National Guard in federal service, in a state during a disaster or emergency. This provision caused concern that it would disrupt unity of effort in response as federal forces under federal command respond alongside Guard forces under a Governor's authority.

In response to strong opposition by the states the Insurrection Act was amended in 2008 to restore the Act to its pre-2007 language.⁵ The states were concerned with federal preemption of the states' authority to command and control their Guard forces in time of disaster or emergency.

Legislation is currently pending before the Congress to assure that tactical control of the Armed Forces on duty within a state or possession is vested in the governor thereof when such forces are engaged in a domestic operation, including emergency response.⁶

The National Governors Association has published a policy position on this issue stating:

In order to carry out their homeland defense and homeland security responsibilities, governors must retain command and control over the domestic use of their own National Guard forces and supporting National Guard forces from other states operating within

¹ Title 10, U.S.C.

² Title 32, U.S.C.

³ The Insurrection Act of 1807, 10 U.S.C. 331-335, authorizes the President of the United States, upon the call of the state legislature or the governor if the legislature cannot be convened, to call the militia into federal service in time of insurrection.

⁴ The Posse Comitatus Act of 1878, 18 U.S.C. 1385, prohibits the use of federal troops for law enforcement purposes.

⁵ National Defense Authorization Act for Fiscal Year 2008, H.R. 4986.

⁶ 111th Congress Second Session, Senate Bill 1361.

the supported governor's state or territory. For the same reasons, when a Dual Status Command has not been established under 32 USC 325, governors, acting through their Adjutants General and Joint Force Headquarters-State, must have tactical control over all Title 10 active duty and reserve military forces engaged in domestic operations within the governor's state or territory. Exceptions to this are: (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, a governor's tactical control of Title 10 military forces would be inappropriate and federal activation of the governor's National Guard forces under Title 10 USC for domestic operations should be authorized. Unless or until governors are given tactical control over Title 10 active duty and reserve military forces engaged in domestic operations within their state or territory, governors support the congressional rejection of provisions to change the Insurrection Act to allow the President to call-up and domestically deploy federal reservists during the response to a domestic event.⁷

Effect of Proposed Changes

Council Substitute for House Memorial 227 urges the Congress of the United States to preserve the authority of the Governor to retain command and control over the Florida National Guard. The memorial also urges Congress to reject any changes to federal law which would restrict or diminish the authority of the Governor to activate the Guard in response to a domestic crisis, disaster, or other emergency.

The memorial requires that copies of the memorial be dispatched to the President of the United States, to the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation of the United States Congress.

B. SECTION DIRECTORY:

None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁷ National Governors Association Policy Position HHS-03, Army and Air National Guard, located on National Governors Association website at <http://www.nga.org/portal/site/nga/menuitem.8358ec82f5b198d18a278110501010a0/?vgnnextoid=24ca9e2f1b091010VgnVCM100001a01010aRCRD> last viewed on March 1, 2010.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 16, 2010, the Economic Development & Community Affairs Policy Council adopted an amendment to conform the language to the Senate Memorial. The analysis is drafted to the committee substitute.