

HOUSE BILL REPORT

SB 5875

As Passed House - Amended
April 9, 1993

Title: An act relating to the powers and duties of the governor as commander-in-chief of the Washington national guard.

Brief Description: Enacting the national guard mutual assistance counter-drug activities compact.

Sponsors: Senators Gaspard, von Reichbauer, A. Smith, Winsley and M. Rasmussen; by request of Military Department.

Brief History:

Reported by House Committee on:
Judiciary, March 30, 1993, DPA;
Passed House - Amended, April 9, 1993, 98-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Bill Perry (786-7123).

Background: The state's "organized militia" (the National Guard) may be called to active duty by the governor for any of a number of reasons. Those reasons are established by state statute and include the following events, or the imminent danger of the events:

- (1) war, insurrection, rebellion, invasion, tumult, or riot;
- (2) a mob or organized body acting by force to commit a felony;
- (3) the failure of local authorities to preserve law and order; and
- (4) public disaster.

For several years, the National Guard (Guard) has assisted local law enforcement agencies with personnel, equipment, and expertise in drug law enforcement activities. In a case currently before the state Supreme Court, a defendant is arguing that his conviction should be overturned because National Guard personnel illegally participated in the seizure of evidence against him. The defendant is arguing that law does not authorize the use of National Guard personnel for enforcement of drug laws.

In 1991, after the seizure involved in the case on appeal, the governor issued a memorandum to the Adjutant General of the National Guard. The memorandum directs the Guard to "respond to and support law enforcement agencies within this state in efforts to combat the presence of illegal drugs and their effects." A question still remains, however, as to whether the memorandum is valid authorization given the criteria in the state law described above. The National Guard is suggesting express statutory authorization for the use of the Guard for the enforcement of drug laws.

A federal statute allows states "to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws." The National Guard is suggesting adoption of a compact which would allow cooperative interstate efforts by the Guards of member states to enforce drug laws.

Summary of Bill: Two authorizations are provided with respect to the involvement of the National Guard in drug law enforcement.

First, the governor is given explicit authorization to activate the Guard in response to the request of "competent local authority." The authorization is limited to use of the Guard "in support of enforcement of controlled substance statutes."

Second, the "National Guard Mutual Assistance Counter-Drug Activities Compact" is adopted.

The compact includes provisions for: the entry into and withdrawal from the compact; the content and operation of agreements under the compact; and the civil and criminal liability of personnel acting pursuant to an agreement.

The compact covers both interstate and intrastate drug law enforcement activities. Under the compact, the governor of this state may enter into an agreement with the governor of any other state that has also adopted the compact. That agreement may be for the use of National Guard troops from

either or both states for the enforcement of drug laws in either or both states. Any state may withdraw from the compact if the Legislature repeals the legislation that adopted the compact and one year has passed since the governor gave written notice to the governors of all other compact members. The National Guard is also authorized to enter into agreements with any local, state, or federal law enforcement agency operating within this state. Law enforcement agencies include agencies that enforce "penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws."

Agreements under the compact may include provisions for using or sharing National Guard personnel and equipment. Specifically, the agreement may provide for the use of Guard personnel in "drug interdiction and counter-drug activities" and in "demand reduction." Interdiction and counter-drug activities include:

- (1) providing information to law enforcement officials "that may be relevant to a violation" of law;
- (2) making available to law enforcement agencies supplies, parts, base facilities, research facilities or other equipment;
- (3) providing personnel to train law enforcement personnel;
- (4) providing personnel to operate equipment;
- (5) operating and maintaining equipment;
- (6) detecting and monitoring air, land and sea traffic, and facilitating communications;
- (7) providing administrative, interpretive, analytic or other support; and
- (8) providing assistance to law enforcement in prosecuting and incarcerating arrested persons.

Demand reduction activities include the use of Guard personnel and equipment for the prevention of drug abuse and for the reduction of demand for illegal drugs.

The compact identifies specific powers, rights, and obligations of parties to an agreement that must be negotiated in any agreement. These required provisions of an agreement include: the duration of the agreement, the nature of any legal entity created by the agreement, the purpose of the agreement, the method of termination, and the

administration of the agreement, including personnel matters.

Any agreement under the compact must be reviewed by the attorney general. The attorney general may reject an agreement only if it is not in proper form or does not conform to the compact or to other Washington law. If the attorney general does not indicate approval or rejection within 30 days, an agreement is considered approved.

Various rules are prescribed by the compact for the allocation of liabilities and responsibilities among states that are party to an agreement. Generally, a state that requests assistance is liable for any liability arising in connection with the request, whether under the laws of the requesting state or the responding state. A responding state is entitled to reimbursement from a requesting state for any loss, damage, or expense incurred in operating equipment. Unless otherwise agreed to, each party will bear the personnel costs of its own Guard members.

While on duty pursuant to an agreement under the compact, Guard personnel continue to be subject to the home state's code of military justice, in addition to applicable criminal statutes in the state in which an offense occurs. As is the case under existing law for duty within the state, personnel continue to be immune from any civil liability for acts or omissions during the performance of their duties.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The ongoing program of assistance by the National Guard has been of tremendous help to local law enforcement. Entering the compact with other states will allow Washington to use its expertise and equipment to assist others while providing valuable training for its own Guard members, all at no cost to this state.

Testimony Against: None.

Witnesses: Major General Gregory Barlow, Washington Military Department; Judi Kosterman, Governor's office; and Joe Solseng, Okanogan County Prosecutor's office (all pro).