

CERTIFICATION OF ENROLLMENT

SENATE BILL 5875

53rd Legislature
1993 Regular Session

Passed by the Senate April 20, 1993
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 9, 1993
YEAS 98 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5875** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5875

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

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

Read first time 02/19/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to the powers and duties of the governor as
2 commander-in-chief of the Washington national guard; amending RCW
3 38.08.040; and adding a new section to chapter 38.08 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 38.08.040 and 1989 c 19 s 7 are each amended to read
6 as follows:

7 In event of war, insurrection, rebellion, invasion, tumult, riot,
8 mob, or organized body acting together by force with intent to commit
9 a felony or to offer violence to persons or property, or by force and
10 violence to break and resist the laws of this state, or the United
11 States, or in case of the imminent danger of the occurrence of any of
12 said events, or at the lawful request of competent state or local
13 authority in support of enforcement of controlled substance statutes,
14 or whenever responsible civil authorities shall, for any reason, fail
15 to preserve law and order, or protect life or property, or the governor
16 believes that such failure is imminent, or in event of public disaster,
17 the governor shall have power to order the organized militia of
18 Washington, or any part thereof, into active service of the state to

1 execute the laws, and to perform such duty as the governor shall deem
2 proper.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 38.08 RCW
4 to read as follows:

5 (1) The governor, with the consent of congress, is authorized to
6 enter into compacts and agreements for the deployment of the national
7 guard with governors of other states concerning drug interdiction,
8 counter-drug, and demand reduction activities. Article 1, Section 10
9 of the Constitution of the United States permits a state to enter into
10 a compact or agreement with another state, subject to the consent of
11 congress. Congress, through enactment of Title 4 of the U.S.C. Section
12 112, encourages the states to enter such compacts for cooperative
13 effort and mutual assistance.

14 (2) The compact language contained in this subsection is intended
15 to deal comprehensively with the supportive relationships between
16 states in utilizing national guard assets in counter-drug activities.

17 **NATIONAL GUARD MUTUAL ASSISTANCE**
18 **COUNTER-DRUG ACTIVITIES COMPACT**

19 **ARTICLE I**
20 **PURPOSE**

21 The purposes of this compact are to:

22 (a) Provide for mutual assistance and support among the party
23 states in the utilization of the national guard in drug interdiction,
24 counter-drug, and demand reduction activities.

25 (b) Permit the national guard of this state to enter into mutual
26 assistance and support agreements, on the basis of need, with one or
27 more law enforcement agencies operating within this state, for
28 activities within this state, or with a national guard of one or more
29 other states, whether said activities are within or without this state
30 in order to facilitate and coordinate efficient, cooperative
31 enforcement efforts directed toward drug interdiction, counter-drug
32 activities, and demand reduction.

33 (c) Permit the national guard of this state to act as a receiving
34 and a responding state as defined within this compact and to ensure the
35 prompt and effective delivery of national guard personnel, assets, and

1 services to agencies or areas that are in need of increased support and
2 presence.

3 (d) Permit and encourage a high degree of flexibility in the
4 deployment of national guard forces in the interest of efficiency.

5 (e) Maximize the effectiveness of the national guard in those
6 situations that call for its utilization under this compact.

7 (f) Provide protection for the rights of national guard personnel
8 when performing duty in other states in counter-drug activities.

9 (g) Ensure uniformity of state laws in the area of national guard
10 involvement in interstate counter-drug activities by incorporating said
11 uniform laws within the compact.

12 **ARTICLE II**

13 **ENTRY INTO FORCE AND WITHDRAWAL**

14 (a) This compact shall enter into force when enacted into law by
15 any two states. Thereafter, this compact shall become effective as to
16 any other state upon its enactment thereof.

17 (b) Any party state may withdraw from this compact by enacting a
18 statute repealing the same, but no such withdrawal shall take effect
19 until one year after the governor of the withdrawing state has given
20 notice in writing of such withdrawal to the governors of all other
21 party states.

22 **ARTICLE III**

23 **MUTUAL ASSISTANCE AND SUPPORT**

24 (a) As used in this article:

25 (1) "Drug interdiction and counter-drug activities" means the use
26 of national guard personnel, while not in federal service, in any law
27 enforcement support activities that are intended to reduce the supply
28 or use of illegal drugs in the United States. These activities
29 include, but are not limited to:

30 (i) Providing information obtained during either the normal course
31 of military training or operations or during counter-drug activities,
32 to federal, state, or local law enforcement officials that may be
33 relevant to a violation of any federal or state law within the
34 jurisdiction of such officials;

1 (ii) Making available any equipment, including associated supplies
2 or spare parts, base facilities, or research facilities of the national
3 guard to any federal, state, or local civilian law enforcement official
4 for law enforcement purposes, in accordance with other applicable law
5 or regulation;

6 (iii) Providing available national guard personnel to train
7 federal, state, or local civilian law enforcement in the operation and
8 maintenance of equipment, including equipment made available above, in
9 accordance with other applicable law;

10 (iv) Providing available national guard personnel to operate and
11 maintain equipment provided to federal, state, or local law enforcement
12 officials pursuant to activities defined and referred to in this
13 compact;

14 (v) Operation and maintenance of equipment and facilities of the
15 national guard or law enforcement agencies used for the purposes of
16 drug interdiction and counter-drug activities;

17 (vi) Providing available national guard personnel to operate
18 equipment for the detection, monitoring, and communication of the
19 movement of air, land, and sea traffic, to facilitate communications in
20 connection with law enforcement programs, to provide transportation for
21 civilian law enforcement personnel, and to operate bases of operations
22 for civilian law enforcement personnel;

23 (vii) Providing available national guard personnel, equipment, and
24 support for administrative, interpretive, analytic, or other purposes;

25 (viii) Providing available national guard personnel and equipment
26 to aid federal, state, and local officials and agencies otherwise
27 involved in the prosecution or incarceration of individuals processed
28 within the criminal justice system who have been arrested for criminal
29 acts involving the use, distribution, or transportation of controlled
30 substances as defined in 21 U.S.C. Sec. 801 et seq., or otherwise by
31 law, in accordance with other applicable law.

32 (2) "Demand reduction" means providing available national guard
33 personnel, equipment, support, and coordination to federal, state,
34 local, and civic organizations, institutions and agencies for the
35 purposes of the prevention of drug abuse and the reduction in the
36 demand for illegal drugs.

37 (3) "Requesting state" means the state whose governor requested
38 assistance in the area of counter-drug activities.

1 (4) "Responding state" means the state furnishing assistance, or
2 requested to furnish assistance, in the area of counter-drug
3 activities.

4 (5) "Law enforcement agency" means a lawfully established federal,
5 state, or local public agency that is responsible for the prevention
6 and detection of crime and the enforcement of penal, traffic,
7 regulatory, game, immigration, postal, customs, or controlled
8 substances laws.

9 (6) "Official" means the appointed, elected, designated, or
10 otherwise duly selected representative of an agency, institution, or
11 organization authorized to conduct those activities for which support
12 is requested.

13 (7) "Mutual assistance and support agreement" or "agreement" means
14 an agreement between the national guard of this state and one or more
15 law enforcement agencies or between the national guard of this state
16 and the national guard of one or more other states, consistent with the
17 purposes of this compact

18 (8) "Party state" refers to a state that has lawfully enacted this
19 compact.

20 (9) "State" means each of the several states of the United States,
21 the District of Columbia, the Commonwealth of Puerto Rico, or a
22 territory or possession of the United States.

23 (b) Upon the request of a governor of a party state for assistance
24 in the area of interdiction and counter-drug, and demand reduction
25 activities, the governor of a responding state shall have authority
26 under this compact to send without the borders of his or her state and
27 place under the temporary operational control of the appropriate
28 national guard or other military authorities of the requesting state,
29 for the purposes of providing such requested assistance, all or any
30 part of the national guard forces of his or her state as he or she may
31 deem necessary, and the exercise of his or her discretion in this
32 regard shall be conclusive.

33 (c) The governor of a party state may, within his or her
34 discretion, withhold the national guard forces of his or her state from
35 such use and recall any forces or part or member thereof previously
36 deployed in a requesting state.

37 (d) The national guard of this state is hereby authorized to engage
38 in interdiction and counter-drug activities and demand reduction.

1 (e) The adjutant general of this state, in order to further the
2 purposes of this compact, may enter into a mutual assistance and
3 support agreement with one or more law enforcement agencies of this
4 state, including federal law enforcement agencies operating within this
5 state, or with the national guard of one or more other party states to
6 provide personnel, assets, and services in the area of interdiction and
7 counter-drug activities and demand reduction. However, no such
8 agreement may be entered into with a party that is specifically
9 prohibited by law from performing activities that are the subject of
10 the agreement.

11 (f) The agreement must set forth the powers, rights, and
12 obligations of the parties to the agreement, where applicable, as
13 follows:

14 (1) Its duration;

15 (2) The organization, composition, and nature of any separate legal
16 entity created thereby;

17 (3) The purpose of the agreement;

18 (4) The manner of financing the agreement and establishing and
19 maintaining its budget;

20 (5) The method to be employed in accomplishing the partial or
21 complete termination of the agreement and for disposing of property
22 upon such partial or complete termination;

23 (6) Provision for administering the agreement, which may include
24 creation of a joint board responsible for such administration;

25 (7) The manner of acquiring, holding, and disposing of real and
26 personal property used in this agreement, if necessary;

27 (8) The minimum standards for national guard personnel implementing
28 the provisions of this agreement;

29 (9) The minimum insurance required of each party to the agreement,
30 if necessary;

31 (10) The chain of command or delegation of authority to be followed
32 by national guard personnel acting under the provisions of the
33 agreement;

34 (11) The duties and authority that the national guard personnel of
35 each party state may exercise; and

36 (12) Any other necessary and proper matters.

37 Agreements prepared under the provisions of this section are exempt
38 from any general law pertaining to intergovernmental agreements.

1 (g) As a condition precedent to an agreement becoming effective
2 under this part, the agreement must be submitted to and receive the
3 approval of the office of the attorney general of Washington. The
4 attorney general of the state of Washington may delegate his or her
5 approval authority to the appropriate attorney for the Washington
6 national guard subject to those conditions which he or she decides are
7 appropriate. The delegation must be in writing and is subject to the
8 following:

9 (1) The attorney general, or his or her agent as stated above,
10 shall approve an agreement submitted to him or her under this part
11 unless he or she finds that it is not in proper form, does not meet the
12 requirements set forth in this part, or otherwise does not conform to
13 the laws of Washington. If the attorney general disapproves an
14 agreement, he or she shall provide a written explanation to the
15 adjutant general of the Washington national guard; and

16 (2) If the attorney general, or his or her authorized agent as
17 stated above, does not disapprove an agreement within thirty days after
18 its submission to him or her, it is considered approved by him or her.

19 (h) Whenever national guard forces of any party state are engaged
20 in the performance of duties, in the area of drug interdiction,
21 counter-drug, and demand reduction activities, pursuant to orders, they
22 shall not be held personally liable for any acts or omissions which
23 occur during the performance of their duty.

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25

ARTICLE IV
RESPONSIBILITIES

26 (a) Nothing in this compact shall be construed as a waiver of any
27 benefits, privileges, immunities, or rights otherwise provided for
28 national guard personnel performing duty pursuant to Title 32 of the
29 United States Code nor shall anything in this compact be construed as
30 a waiver of coverage provided for under the Federal Tort Claims Act.
31 In the event that national guard personnel performing counter-drug
32 activities do not receive rights, benefits, privileges, and immunities
33 otherwise provided for national guard personnel as stated above, the
34 following provisions shall apply:

35 (1) Whenever national guard forces of any responding state are
36 engaged in another state in carrying out the purposes of this compact,
37 the members thereof so engaged shall have the same powers, duties,

1 rights, privileges, and immunities as members of national guard forces
2 of the requesting state. The requesting state shall save and hold
3 members of the national guard forces of responding states harmless from
4 civil liability, except as otherwise provided herein, for acts or
5 omissions that occur in the performance of their duty while engaged in
6 carrying out the purposes of this compact, whether responding forces
7 are serving the requesting state within the borders of the responding
8 state or are attached to the requesting state for purposes of
9 operational control.

10 (2) Subject to the provisions of paragraphs (3), (4), and (5) of
11 this Article, all liability that may arise under the laws of the
12 requesting state or the responding states, on account of or in
13 connection with a request for assistance or support, shall be assumed
14 and borne by the requesting state.

15 (3) Any responding state rendering aid or assistance pursuant to
16 this compact shall be reimbursed by the requesting state for any loss
17 or damage to, or expense incurred in the operation of, any equipment
18 answering a request for aid, and for the cost of the materials,
19 transportation, and maintenance of national guard personnel and
20 equipment incurred in connection with such request, provided that
21 nothing herein contained shall prevent any responding state from
22 assuming such loss, damage, expense, or other cost.

23 (4) Unless there is a written agreement to the contrary, each party
24 state shall provide, in the same amounts and manner as if they were on
25 duty within their state, for pay and allowances of the personnel of its
26 national guard units while engaged without the state pursuant to this
27 compact and while going to and returning from such duty pursuant to
28 this compact.

29 (5) Each party state providing for the payment of compensation and
30 death benefits to injured members and the representatives of deceased
31 members of its national guard forces in case such members sustain
32 injuries or are killed within their own state shall provide for the
33 payment of compensation and death benefits in the same manner and on
34 the same terms in the event such members sustain injury or are killed
35 while rendering assistance or support pursuant to this compact. Such
36 benefits and compensation shall be deemed items of expense reimbursable
37 pursuant to paragraph (3) of this Article.

38 (b) Officers and enlisted personnel of the national guard
39 performing duties subject to proper orders pursuant to this compact

1 shall be subject to and governed by the provisions of their home state
2 code of military justice whether they are performing duties within or
3 without their home state. In the event that any national guard member
4 commits, or is suspected of committing, a criminal offense while
5 performing duties pursuant to this compact without his or her home
6 state, he or she may be returned immediately to his or her home state
7 and said home state shall be responsible for any disciplinary action to
8 be taken. However, nothing in this section shall abrogate the general
9 criminal jurisdiction of the state in which the offense occurred.

10 **ARTICLE V**
11 **DELEGATION**

12 Nothing in this compact shall be construed to prevent the governor
13 of a party state from delegating any of his or her responsibilities or
14 authority respecting the national guard, provided that such delegation
15 is otherwise in accordance with law. For purposes of this compact,
16 however, the governor shall not delegate the power to request
17 assistance from another state.

18 **ARTICLE VI**
19 **LIMITATIONS**

20 Nothing in this compact shall:

21 (a) Authorize or permit national guard units or personnel to be
22 placed under the operational control of any person not having the
23 national guard rank or status required by law for the command in
24 question.

25 (b) Deprive a properly convened court of jurisdiction over an
26 offense or a defendant merely because of the fact that the national
27 guard, while performing duties pursuant to this compact, was utilized
28 in achieving an arrest or indictment.

29 **ARTICLE VII**
30 **CONSTRUCTION AND SEVERABILITY**

31 This compact shall be liberally construed so as to effectuate the
32 purposes thereof. The provisions of this compact shall be severable
33 and if any phrase, clause, sentence, or provision of this compact is

1 declared to be contrary to the Constitution of the United States or of
2 any state or the applicability thereof to any government, agency,
3 person, or circumstance is held invalid, the validity of the remainder
4 of this compact and the applicability thereof to any government,
5 agency, person, or circumstance shall not be affected thereby. If this
6 compact shall be held contrary to the constitution of any state
7 participating herein, the compact shall remain in full force and effect
8 as to the remaining party states and in full force and effect as to the
9 state affected as to all severable matters.

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