

110TH CONGRESS
2D SESSION

H. R. 5562

To authorize the National Guard to provide support for the border control activities of the United States Customs and Border Protection of the Department of Homeland Security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2008

Mrs. WILSON of New Mexico introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To authorize the National Guard to provide support for the border control activities of the United States Customs and Border Protection of the Department of Homeland Security, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. NATIONAL GUARD SUPPORT FOR BORDER CON-**
4 **TROL ACTIVITIES.**

5 (a) OPERATION JUMP START.—

6 (1) IN GENERAL.—Not fewer than 6,000 Na-
7 tional Guard personnel shall continue to be deployed
8 along the international border between the United

1 States and Mexico under Operation Jump Start
 2 until the date on which the Federal Government has
 3 achieved operational control of such border (as de-
 4 fined in section 2(b) of the Secure Fence Act of
 5 2006 (Public Law 109–367)).

6 (2) EXEMPTION.—National Guard personnel
 7 deployed pursuant to paragraph (1) shall not be in-
 8 cluded in the calculation to determine compliance
 9 with—

10 (A) limits on end strength; or

11 (B) limits on the number of National
 12 Guard personal that may be placed on active
 13 duty for operational support.

14 (b) SUPPORT AUTHORIZED.—Chapter 1 of title 32,
 15 United States Code, is amended by inserting after section
 16 112 the following:

17 **“§ 112a. Border control activities**

18 “(a) FUNDING ASSISTANCE.—The Secretary of De-
 19 fense may provide funds to the Governor of a State who
 20 submits to the Secretary a State border control activities
 21 plan satisfying the requirements of subsection (c). Such
 22 funds shall be used for the following:

23 “(1) The pay, allowances, clothing, subsistence,
 24 gratuities, travel, and related expenses, as author-
 25 ized by State law, of personnel of the National

1 Guard of that State used, while not in Federal serv-
2 ice, for the purpose of border control activities.

3 “(2) The operation and maintenance of the
4 equipment and facilities of the National Guard of
5 that State used for the purpose of border control ac-
6 tivities.

7 “(3) The procurement of services and equip-
8 ment, and the leasing of equipment, for the National
9 Guard of that State used for the purpose of border
10 control activities. However, the use of such funds for
11 the procurement of equipment may not exceed
12 \$5,000 per item, unless approval for procurement of
13 equipment in excess of that amount is granted in ad-
14 vance by the Secretary of Defense.

15 “(b) USE OF PERSONNEL PERFORMING FULL-TIME
16 NATIONAL GUARD DUTY.—(1) Under regulations pre-
17 scribed by the Secretary of Defense, personnel of the Na-
18 tional Guard of a State may, in accordance with the State
19 border control activities plan referred to in subsection (c),
20 be ordered to perform full-time National Guard duty
21 under section 502(f) of this title for the purpose of car-
22 rying out border control activities.

23 “(2)(A) A member of the National Guard serving on
24 full-time National Guard duty under orders authorized
25 under paragraph (1) shall participate in the training re-

1 quired under section 502(a) of this title in addition to the
2 duty performed for the purpose authorized under that
3 paragraph. The pay, allowances, and other benefits of the
4 member while participating in the training shall be the
5 same as those to which the member is entitled while per-
6 forming duty for the purpose of carrying out border con-
7 trol activities. The member is not entitled to additional
8 pay, allowances, or other benefits for participation in
9 training required under section 502(a)(1) of this title.

10 “(B) Appropriations available for the Department of
11 Defense for homeland defense may be used for paying
12 costs associated with a member’s participation in training
13 described in subparagraph (A). The appropriation shall be
14 reimbursed in full, out of appropriations available for pay-
15 ing those costs, for the amounts paid. Appropriations
16 available for paying those costs shall be available for mak-
17 ing the reimbursements.

18 “(C) To ensure that the use of units and personnel
19 of the National Guard of a State pursuant to a State bor-
20 der control activities plan does not degrade the training
21 and readiness of such units and personnel, the following
22 requirements shall apply in determining the border control
23 activities that units and personnel of the National Guard
24 of a State may perform:

1 “(i) The performance of the activities may not
2 adversely affect the quality of that training or other-
3 wise interfere with the ability of a member or unit
4 of the National Guard to perform the military func-
5 tions of the member or unit.

6 “(ii) National Guard personnel will not degrade
7 their military skills as a result of performing the ac-
8 tivities.

9 “(iii) The performance of the activities will not
10 result in a significant increase in the cost of train-
11 ing.

12 “(iv) In the case of border control activities per-
13 formed by a unit organized to serve as a unit, the
14 activities will support valid unit training require-
15 ments.

16 “(c) PLAN REQUIREMENTS.—A State border control
17 activities plan shall—

18 “(1) specify how personnel of the National
19 Guard of that State are to be used in border control
20 activities in support of the mission of the United
21 States Customs and Border Protection of the De-
22 partment of Homeland Security;

23 “(2) certify that those operations are to be con-
24 ducted at a time when the personnel involved are not
25 in Federal service;

1 “(3) certify that participation by National
2 Guard personnel in those operations is service in ad-
3 dition to training required under section 502 of this
4 title;

5 “(4) certify that any engineer-type activities (as
6 defined by the Secretary of Defense) under the plan
7 will be performed only by units and members of the
8 National Guard;

9 “(5) include a certification by the Attorney
10 General of the State (or, in the case of a State with
11 no position of Attorney General, a civilian official of
12 the State equivalent to a State attorney general)
13 that the use of the National Guard of the State for
14 the activities proposed under the plan is authorized
15 by, and is consistent with, State law; and

16 “(6) certify that the Governor of the State or
17 a civilian law enforcement official of the State des-
18 ignated by the Governor has determined that any ac-
19 tivities included in the plan that are carried out in
20 conjunction with Federal law enforcement agencies
21 serve a State law enforcement purpose.

22 “(d) EXAMINATION OF PLAN.—Before funds are pro-
23 vided to the Governor of a State under this section and
24 before members of the National Guard of that State are
25 ordered to full-time National Guard duty as authorized in

1 subsection (b), the Secretary of Defense shall, in consulta-
2 tion with the Secretary of Homeland Security, examine the
3 adequacy of the plan submitted by the Governor under
4 subsection (c). The plan as approved by the Secretary of
5 Defense may provide for the use of personnel and equip-
6 ment of the National Guard of that State to assist United
7 States Customs and Border Protection in the transpor-
8 tation of aliens who have violated a Federal immigration
9 law.

10 “(e) END STRENGTH LIMITATION.—(1) Except as
11 provided in paragraphs (2) and (3), at the end of a fiscal
12 year there may not be more than 6,000 members of the
13 National Guard—

14 “(A) on full-time National Guard duty under
15 section 502(f) of this title to perform border control
16 activities pursuant to an order to duty; or

17 “(B) on duty under State authority to perform
18 border control activities pursuant to an order to
19 duty with State pay and allowances being reim-
20 bursed with funds provided under subsection (a)(1).

21 “(2) The Secretary of Defense may increase the end
22 strength authorized under paragraph (1) by not more than
23 20 percent for any fiscal year if the Secretary determines
24 that such an increase is necessary in the national security
25 interests of the United States.

1 “(3) National Guard personnel deployed pursuant to
2 paragraph (1) shall not be included in the calculation to
3 determine compliance with—

4 “(A) limits on end strength; or

5 “(B) limits on the number of National Guard
6 personal that may be placed on active duty for oper-
7 ational support.

8 “(f) ANNUAL REPORT.—The Secretary of Defense
9 shall submit to Congress an annual report regarding as-
10 sistance provided and activities carried out under this sec-
11 tion during the preceding fiscal year. The report shall in-
12 clude the following:

13 “(1) The number of members of the National
14 Guard excluded under subsection (e) from the com-
15 putation of end strengths.

16 “(2) A description of the border control activi-
17 ties conducted under State border control activities
18 plans referred to in subsection (c) with funds pro-
19 vided under this section.

20 “(3) An accounting of the amount of funds pro-
21 vided to each State.

22 “(4) A description of the effect on military
23 training and readiness of using units and personnel
24 of the National Guard to perform activities under
25 the State border control activities plans.

1 “(g) STATUTORY CONSTRUCTION.—Nothing in this
2 section shall be construed as a limitation on the authority
3 of any unit of the National Guard of a State, when such
4 unit is not in Federal service, to perform law enforcement
5 functions authorized to be performed by the National
6 Guard by the laws of the State concerned.

7 “(h) DEFINITIONS.—In this section:

8 “(1) The term ‘border control activities’, with
9 respect to the National Guard of a State, means the
10 use of National Guard personnel in border control
11 activities authorized by the law of the State and re-
12 quested by the Governor of the State in support of
13 the mission of the United States Customs and Bor-
14 der Protection of the Department of Homeland Se-
15 curity, including activities as follows:

16 “(A) Construction of roads, fences, and ve-
17 hicle barriers.

18 “(B) Search and rescue operations.

19 “(C) Intelligence gathering, surveillance,
20 and reconnaissance.

21 “(D) Communications and information
22 technology support.

23 “(E) Installation and operation of cam-
24 eras.

1 “(F) Repair and maintenance of infra-
2 structure.

3 “(G) Administrative support.

4 “(H) Aviation support, including mainte-
5 nance.

6 “(I) Logistics support.

7 “(2) The term ‘Governor of a State’ means, in
8 the case of the District of Columbia, the Com-
9 manding General of the National Guard of the Dis-
10 trict of Columbia.

11 “(3) The term ‘State’ means each of the several
12 States, the District of Columbia, the Commonwealth
13 of Puerto Rico, or a territory or possession of the
14 United States.”.

15 (c) CLERICAL AMENDMENT.—The table of sections
16 at the beginning of chapter 1 of such title is amended by
17 inserting after the item relating to section 112 the fol-
18 lowing:

 “112a. Border control activities.”.

