

111TH CONGRESS
1ST SESSION

S. 1361

To amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. LEAHY (for himself and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, 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. SHORT TITLE.**

4 This Act may be cited as the “National Guard Em-
5 powerment and State-National Defense Integration Act of
6 2009”.

1 **SEC. 2. EXPANDED AUTHORITY OF THE CHIEF OF THE NA-**
 2 **TIONAL GUARD BUREAU.**

3 (a) MEMBERSHIP ON JOINT CHIEFS OF STAFF.—

4 (1) IN GENERAL.—Section 151(a) of title 10,
 5 United States Code, is amended by adding at the
 6 end the following new paragraph:

7 “(7) The Chief of the National Guard Bu-
 8 reau.”.

9 (2) CONFORMING AMENDMENT.—Section 10502
 10 of such title is amended—

11 (A) by redesignating subsections (d) and
 12 (e) as subsections (e) and (f), respectively; and

13 (B) by inserting after subsection (c) the
 14 following new subsection (d):

15 “(d) MEMBER OF JOINT CHIEFS OF STAFF.—The
 16 Chief of the National Guard Bureau shall perform the du-
 17 ties prescribed for him or her as a member of the Joint
 18 Chiefs of Staff under section 151 of this title.”.

19 (b) ANNUAL REPORT TO CONGRESS ON VALIDATED
 20 REQUIREMENTS.—Section 10504 of title 10, United
 21 States Code, is amended by adding at the end the fol-
 22 lowing new subsection:

23 “(c) ANNUAL REPORT ON VALIDATED REQUIRE-
 24 MENTS.—Not later than December 31 each year, the Chief
 25 of the National Guard Bureau shall submit to Congress
 26 a report on the following:

1 “(1) The requirements validated under section
 2 10503a(b)(1) of this title during the preceding fiscal
 3 year.

4 “(2) The requirements referred to in paragraph
 5 (1) for which funding is to be requested in the next
 6 budget for a fiscal year under section 10544 of this
 7 title.

8 “(3) The requirements referred to in paragraph
 9 (1) for which funding will not be requested in the
 10 next budget for a fiscal year under section 10544 of
 11 this title.”.

12 **SEC. 3. EXPANDED FUNCTIONS OF THE NATIONAL GUARD**
 13 **BUREAU.**

14 (a) **MILITARY ASSISTANCE FOR CIVIL AUTHORI-**
 15 **TIES.**—Chapter 1011 of title 10, United States Code, is
 16 amended by inserting after section 10503 the following
 17 new section:

18 **“§ 10503a. Functions of National Guard Bureau: mili-**
 19 **tary assistance to civil authorities**

20 “(a) **IDENTIFICATION OF ADDITIONAL NECESSARY**
 21 **ASSISTANCE.**—The Chief of the National Guard Bureau
 22 shall—

23 “(1) identify gaps between Federal and State
 24 military capabilities to prepare for and respond to
 25 emergencies; and

1 “(2) make recommendations to the Secretary of
2 Defense on programs and activities of the National
3 Guard for military assistance to civil authorities to
4 address such gaps.

5 “(b) SCOPE OF RESPONSIBILITIES.—In meeting the
6 requirements of subsection (a), the Chief of the National
7 Guard Bureau shall, in coordination with the adjutants
8 general of the States, have responsibilities as follows:

9 “(1) To validate the requirements of the several
10 States and territories with respect to military assist-
11 ance to civil authorities.

12 “(2) To develop doctrine and training require-
13 ments relating to the provision of military assistance
14 to civil authorities.

15 “(3) To acquire equipment, materiel, and other
16 supplies and services for the provision of military as-
17 sistance to civil authorities.

18 “(4) To assist the Secretary of Defense in pre-
19 paring the budget required under section 10544 of
20 this title.

21 “(5) To administer amounts provided the Na-
22 tional Guard for the provision of military assistance
23 to civil authorities.

1 “(6) To carry out any other responsibility relat-
2 ing to the provision of military assistance to civil au-
3 thorities as the Secretary of Defense shall specify.

4 “(c) ASSISTANCE.—The Chairman of the Joint
5 Chiefs of Staff shall assist the Chief of the National Guard
6 Bureau in carrying out activities under this section.

7 “(d) CONSULTATION.—(1) The Chief of the National
8 Guard Bureau shall carry out activities under this section
9 through and utilizing an integrated planning process es-
10 tablished by the Chief of the National Guard Bureau for
11 purposes of this subsection. The planning process may be
12 known as the ‘National Guard Bureau Strategic Inte-
13 grated Planning Process’.

14 “(2)(A) Under the integrated planning process estab-
15 lished under paragraph (1)—

16 “(i) the planning committee described in sub-
17 paragraph (B) shall develop and submit to the plan-
18 ning directorate described in subparagraph (C) plans
19 and proposals on such matters under the planning
20 process as the Chief of the National Guard Bureau
21 shall designate for purposes of this subsection; and

22 “(ii) the planning directorate shall review and
23 make recommendations to the Chief of the National
24 Guard Bureau on the plans and proposals submitted
25 to the planning directorate under clause (i).

1 “(B) The planning committee described in this sub-
 2 paragraph is a planning committee (to be known as the
 3 ‘State Strategic Integrated Planning Committee’) com-
 4 posed of the adjutant general of each of the several States,
 5 the Commonwealth of Puerto Rico, Guam, the Virgin Is-
 6 lands, and the District of Columbia.

7 “(C) The planning directorate described in this sub-
 8 paragraph is a planning directorate (to be known as the
 9 ‘Federal Strategic Integrated Planning Directorate’) com-
 10 posed of the following (as designated by the Secretary of
 11 Defense for purposes of this subsection):

12 “(i) A major general of the Army National
 13 Guard.

14 “(ii) A major general of the Air National
 15 Guard.

16 “(iii) A major general of the regular Army.

17 “(iv) A major general of the regular Air Force.

18 “(v) A major general (other than a major gen-
 19 eral under clauses (iii) and (iv)) of the United States
 20 Northern Command.

21 “(vi) The Vice Chief of the National Guard Bu-
 22 reau.

23 “(vii) Seven adjutants general from the plan-
 24 ning committee under paragraph (B).”.

1 (b) BUDGETING FOR TRAINING AND EQUIPMENT
 2 AND MILITARY CONSTRUCTION FOR MILITARY ASSIST-
 3 ANCE TO CIVIL AUTHORITIES AND OTHER DOMESTIC
 4 MISSIONS.—Chapter 1013 of such title is amended by
 5 adding at the end the following new section:

6 **“§ 10544. National Guard training and equipment and**
 7 **military construction: budget for military**
 8 **assistance to civil authorities and for**
 9 **other domestic operations**

10 “(a) IN GENERAL.—The budget justification docu-
 11 ments materials submitted to Congress in support of the
 12 budget of the President for a fiscal year (as submitted
 13 with the budget of the President under section 1105(a)
 14 of title 31) shall specify separate amounts for the National
 15 Guard for purposes of military assistance to civil authori-
 16 ties and for other domestic operations during such fiscal
 17 year as follows:

18 “(1) Amounts for training and equipment, in-
 19 cluding critical dual-use equipment.

20 “(2) Amounts for military construction, includ-
 21 ing critical dual-use capital construction.

22 “(b) SCOPE OF FUNDING.—The amounts specified
 23 under subsection (a) for a fiscal year shall be sufficient
 24 for purposes as follows:

1 “(1) The development and implementation of
 2 doctrine and training requirements applicable to the
 3 assistance and operations described in subsection (a)
 4 for such fiscal year.

5 “(2) The acquisition of equipment, materiel,
 6 and other supplies and services necessary for the
 7 provision of such assistance and such operations in
 8 such fiscal year.”.

9 (c) CLERICAL AMENDMENTS.—

10 (1) The table of sections at the beginning of
 11 chapter 1011 of such title is amended by inserting
 12 after the item relating to section 10503 the following
 13 new item:

“10503a. Functions of National Guard Bureau: military assistance to civil au-
 thorities.”.

14 (2) The table of sections at the beginning of
 15 chapter 1013 of such title is amended by adding at
 16 the end the following new item:

“10544. National Guard training and equipment and military construction:
 budget for military assistance to civil authorities and for other
 domestic operations.”.

17 **SEC. 4. REESTABLISHMENT OF POSITION OF VICE CHIEF**
 18 **OF THE NATIONAL GUARD BUREAU.**

19 (a) REESTABLISHMENT OF POSITION.—

20 (1) IN GENERAL.—Chapter 1011 of title 10,
 21 United States Code, is amended—

1 (A) by redesignating section 10505 as sec-
2 tion 10505a; and

3 (B) by inserting after section 10504 the
4 following new section 10505:

5 **“§ 10505. Vice Chief of the National Guard Bureau**

6 “(a) APPOINTMENT.—(1) There is a Vice Chief of the
7 National Guard Bureau, selected by the Secretary of De-
8 fense from officers of the Army National Guard of the
9 United States or the Air National Guard of the United
10 States who—

11 “(A) are recommended for such appointment by
12 their respective Governors or, in the case of the Dis-
13 trict of Columbia, the commanding general of the
14 District of Columbia National Guard;

15 “(B) have had at least 10 years of federally rec-
16 ognized service in an active status in the National
17 Guard; and

18 “(C) are in a grade above the grade of colonel.

19 “(2) The Chief and Vice Chief of the National Guard
20 Bureau may not both be members of the Army or of the
21 Air Force.

22 “(3)(A) Except as provided in subparagraph (B), an
23 officer appointed as Vice Chief of the National Guard Bu-
24 reau serves for a term of four years, but may be removed
25 from office at any time for cause.

1 “(B) The term of the Vice Chief of the National
 2 Guard Bureau shall end within a reasonable time (as de-
 3 termined by the Secretary of Defense) following the ap-
 4 pointment of a Chief of the National Guard Bureau who
 5 is a member of the same armed force as the Vice Chief.

6 “(b) DUTIES.—The Vice Chief of the National Guard
 7 Bureau performs such duties as may be prescribed by the
 8 Chief of the National Guard Bureau.

9 “(c) GRADE.—The Vice Chief of the National Guard
 10 Bureau shall be appointed to serve in the grade of lieuten-
 11 ant general.

12 “(d) FUNCTIONS AS ACTING CHIEF.—When there is
 13 a vacancy in the office of the Chief of the National Guard
 14 Bureau or in the absence or disability of the Chief, the
 15 Vice Chief of the National Guard Bureau acts as Chief
 16 and performs the duties of the Chief until a successor is
 17 appointed or the absence or disability ceases.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-
 19 tions at the beginning of chapter 1011 of such title
 20 is amended by striking the item relating to section
 21 10505 and inserting the following new items:

“10505. Vice Chief of the National Guard Bureau.

“10505a. Director of the Joint Staff of the National Guard Bureau.”.

22 (b) CONFORMING AMENDMENT.—Section
 23 10506(a)(1) of such title is amended by striking “and the
 24 Director of the Joint Staff of the National Guard Bureau”

1 and inserting “, the Vice Chief of the National Guard Bu-
 2 reau, and the Director of the Joint Staff of the National
 3 Guard Bureau”.

4 **SEC. 5. STATE CONTROL OF FEDERAL MILITARY FORCES**
 5 **ENGAGED IN ACTIVITIES WITHIN THE STATES**
 6 **AND POSSESSIONS.**

7 (a) IN GENERAL.—Part I of subtitle A of title 10,
 8 United States Code, is amended by inserting after chapter
 9 15 the following new chapter:

10 **“CHAPTER 16—CONTROL OF THE ARMED**
 11 **FORCES IN ACTIVITIES WITHIN THE**
 12 **STATES AND POSSESSIONS**

“Sec.

“341. Tactical control of the armed forces engaged in activities within the States
 and possessions: emergency response activities.

13 **“§ 341. Tactical control of the armed forces engaged**
 14 **in activities within the States and posses-**
 15 **sions: emergency response activities**

16 “(a) IN GENERAL.—The Secretary of Defense shall
 17 prescribe in regulations policies and procedures to assure
 18 that tactical control of the armed forces on active duty
 19 within a State or possession is vested in the governor of
 20 the State or possession, as the case may be, when such
 21 forces are engaged in a domestic operation, including
 22 emergency response, within such State or possession.

23 “(b) DISCHARGE THROUGH JOINT FORCE HEAD-
 24 QUARTERS.—The policies and procedures required under

1 subsection (a) shall provide for the discharge of tactical
 2 control by the governor of a State or possession as de-
 3 scribed in that subsection through the Joint Force Head-
 4 quarters of the National Guard in the State or possession,
 5 as the case may be, acting through the officer of the Na-
 6 tional Guard in command of the Headquarters.

7 “(c) POSSESSIONS DEFINED.—Notwithstanding any
 8 provision of section 101(a) of this title, in this section,
 9 the term ‘possessions’ means the Commonwealth of Puerto
 10 Rico, Guam, and the Virgin Islands.”.

11 (b) CLERICAL AMENDMENTS.—The tables of chap-
 12 ters at the beginning of title 10, United States Code, and
 13 at the beginning of part I of subtitle A of such title, are
 14 each amended by inserting after the item relating to chap-
 15 ter 15 the following new item:

**“16. Control of the Armed Forces in Activities Within the
 States and Possessions 341”.**

16 **SEC. 6. FISCAL YEAR 2010 FUNDING FOR THE NATIONAL**
 17 **GUARD FOR CERTAIN DOMESTIC ACTIVITIES.**

18 (a) CONTINUITY OF OPERATIONS, CONTINUITY OF
 19 GOVERNMENT, AND CONSEQUENCE MANAGEMENT.—

20 (1) AUTHORIZATION OF APPROPRIATIONS.—

21 There is hereby authorized to be appropriated for
 22 fiscal year 2010 for the Department of Defense
 23 amounts as follows:

1 (A) For National Guard Personnel, Army,
2 \$11,000,000.

3 (B) For National Guard Personnel, Air
4 Force, \$3,500,000.

5 (C) For Operation and Maintenance, Army
6 National Guard, \$11,000,000.

7 (2) AVAILABILITY.—The amounts authorized to
8 be appropriated by paragraph (1) shall be available
9 to the Army National Guard and the Air National
10 Guard, as applicable, for costs of personnel in train-
11 ing and operations with respect to continuity of op-
12 erations, continuity of government, and consequence
13 management in connection with response to terrorist
14 and other attacks on the United States homeland
15 and natural and man-made catastrophes in the
16 United States.

17 (b) DOMESTIC OPERATIONS.—

18 (1) AUTHORIZATION OF APPROPRIATIONS.—

19 There is hereby authorized to be appropriated for
20 fiscal year 2010 for the Department of Defense,
21 \$300,000,000 for Operation and Maintenance, De-
22 fense-wide.

23 (2) AVAILABILITY.—The amount authorized to
24 be appropriated by paragraph (1) shall be available
25 for the Army National Guard and the Air National

1 Guard for emergency preparedness and response ac-
2 tivities of the National Guard while in State status
3 under title 32, United States Code.

4 (3) TRANSFER.—Amounts under the amount
5 authorized to be appropriated by paragraph (1) shall
6 be available for transfer to accounts for National
7 Guard Personnel, Army, and National Guard Per-
8 sonnel, Air Force, for purposes of the pay and allow-
9 ances of members of the National Guard in con-
10 ducting activities described in paragraph (2).

11 (c) JOINT OPERATIONS COORDINATION CENTERS.—

12 (1) AUTHORIZATION OF APPROPRIATIONS.—
13 There is hereby authorized to be appropriated for
14 fiscal year 2010 for the Department of Defense
15 amounts as follows:

16 (A) For National Guard Personnel, Army,
17 \$28,000,000.

18 (B) For National Guard Personnel, Air
19 Force, \$7,000,000.

20 (2) AVAILABILITY.—The amounts authorized to
21 be appropriated by paragraph (1) shall be available
22 to the Army National Guard and the Air National
23 Guard, as applicable, for costs of personnel in con-
24 tinuously staffing a Joint Operations Coordination
25 Center (JOCC) in the Joint Forces Headquarters of

1 the National Guard in each State and Territory for
2 command and control and activation of forces in re-
3 sponse to terrorist and other attacks on the United
4 States homeland and natural and man-made catas-
5 trophes in the United States.

6 (d) SUPPLEMENT NOT SUPPLANT.—The amounts
7 authorized to be appropriated by subsections (a), (b), and
8 (c) for the purposes set forth in such subsections are in
9 addition to any other amounts authorized to be appro-
10 priated for fiscal year 2010 for the Department of Defense
11 for such purposes.

12 **SEC. 7. ENHANCEMENT OF AUTHORITIES RELATING TO**
13 **THE UNITED STATES NORTHERN COMMAND**
14 **AND OTHER COMBATANT COMMANDS.**

15 (a) COMMANDS RESPONSIBLE FOR SUPPORT TO
16 CIVIL AUTHORITIES IN THE UNITED STATES.—The
17 United States Northern Command and the United States
18 Pacific Command shall be the combatant commands of the
19 Armed Forces that are principally responsible for the sup-
20 port of civil authorities in the United States by the Armed
21 Forces.

22 (b) DISCHARGE OF RESPONSIBILITY.—In dis-
23 charging the responsibility set forth in subsection (a), the
24 Commander of the United States Northern Command and

1 the Commander of the United States Pacific Command
2 shall each—

3 (1) in consultation with and acting through the
4 Chief of the National Guard Bureau and the Joint
5 Force Headquarters of the National Guard of the
6 State or States concerned, assist the States in the
7 employment of the National Guard under State con-
8 trol, including National Guard operations conducted
9 in State active duty or under title 32, United States
10 Code; and

11 (2) facilitate the deployment of the Armed
12 Forces on active duty under title 10, United States
13 Code, as necessary to augment and support the Na-
14 tional Guard in its support of civil authorities when
15 National Guard operations are conducted under
16 State control, whether in State active duty or under
17 title 32, United States Code.

18 (c) MEMORANDUM OF UNDERSTANDING.—

19 (1) MEMORANDUM REQUIRED.—Not later than
20 180 days after the date of the enactment of this Act,
21 the Commander of the United States Northern Com-
22 mand, the Commander of the United States Pacific
23 Command, and the Chief of the National Guard Bu-
24 reau shall, with the approval of the Secretary of De-
25 fense, jointly enter into a memorandum of under-

1 standing setting forth the operational relationships,
2 and individual roles and responsibilities, during re-
3 sponses to domestic emergencies among the United
4 States Northern Command, the United States Pa-
5 cific Command, and the National Guard Bureau.

6 (2) MODIFICATION.—The Commander of the
7 United States Northern Command, the Commander
8 of the United States Pacific Command, and the
9 Chief of the National Guard Bureau may from time
10 to time modify the memorandum of understanding
11 under this subsection to address changes in cir-
12 cumstances and for such other purposes as the Com-
13 mander of the United States Northern Command,
14 the Commander of the United States Pacific Com-
15 mand, and the Chief of the National Guard Bureau
16 jointly consider appropriate. Each such modification
17 shall be subject to the approval of the Secretary of
18 Defense.

19 (d) AUTHORITY TO MODIFY ASSIGNMENT OF COM-
20 MAND RESPONSIBILITY.—Nothing in this section shall be
21 construed as altering or limiting the power of the Presi-
22 dent or the Secretary of Defense to modify the Unified
23 Command Plan in order to assign all or part of the respon-
24 sibility described in subsection (a) to a combatant com-

1 mand other than the United States Northern Command
 2 or the United States Pacific Command.

3 (e) REGULATIONS.—The Secretary of Defense shall
 4 prescribe regulations for purposes of aiding the expedi-
 5 tious implementation of the authorities and responsibilities
 6 in this section.

7 **SEC. 8. REQUIREMENTS RELATING TO NATIONAL GUARD**
 8 **OFFICERS IN CERTAIN COMMAND POSITIONS.**

9 (a) COMMANDER OF ARMY NORTH COMMAND.—The
 10 officer serving in the position of Commander, Army North
 11 Command, shall be an officer in the Army National Guard
 12 of the United States.

13 (b) COMMANDER OF AIR FORCE NORTH COM-
 14 MAND.—The officer serving in the position of Commander,
 15 Air Force North Command, shall be an officer in the Air
 16 National Guard of the United States.

17 (c) SENSE OF CONGRESS.—It is the sense of Con-
 18 gress that, in assigning officers to the command positions
 19 specified in subsections (a) and (b), the President should
 20 afford a preference in assigning officers in the Army Na-
 21 tional Guard of the United States or Air National Guard
 22 of the United States, as applicable, who have served as
 23 the adjutant general of a State.

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