

Committee Report

REGULAR CALENDAR

February 12, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on State-Federal Relations and Veterans Affairs to which was referred HB 580,

AN ACT requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Brodie Deshaies

FOR THE MAJORITY OF THE COMMITTEE

MAJORITY COMMITTEE REPORT

Committee:	State-Federal Relations and Veterans Affairs
Bill Number:	HB 580
Title:	requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas.
Date:	February 12, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill is contrary to how our Federal and State Government regulates the National Guard and its mobilization for duty. In 1986, the US Congress passed the Montgomery Amendment, which prohibited State Governors from, "withholding [their] consent to a National Guard unit's active duty outside the country because of an objection to the site, purpose or schedule of the duty." The US Supreme Court unanimously upheld this federal statute in the 1990 case, *Perprich v. Department of Defense*. In 2006, Congress passed the 2007 National Defense Authorization Act, which gave the President the authority to mobilize National Guard units within the United States without the consent of State Governors. These laws and the cited Supreme Court precedent show us that the Federal Government has the authority to deploy National Guard units, as long as such powers are mandated by the Constitution or Congress and even if it is against a Governor's or State's desire. Additionally, there is a fear that this legislation could cause the New Hampshire to lose federal funding for our National Guard. In title 32 of the federal code, in section 108, it states: "If, within a time fixed by the President, a State fails to comply with a requirement of this title, or a regulation prescribed under this title, the National Guard of that State is barred, in whole or in part, as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law." This means if we mandate that New Hampshire's Governor withhold our National Guard units, doing so against federal code, then we could lose federal funding. Therefore, this legislation contradicts the Federal Government's authority over the National Guard and could very well risk our procurement of federal funding for the New Hampshire National Guard.

Vote 20-1.

Rep. Brodie Deshaies
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

State-Federal Relations and Veterans Affairs

HB 580, requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Brodie Deshaies for the **Majority** of State-Federal Relations and Veterans Affairs. The majority recommends ITL because it is contrary to how our federal and state government regulates the National Guard and its mobilization for duty. In 1986, the US Congress passed the Montgomery Amendment, which prohibited state governors from "withholding [their] consent to a National Guard unit's active duty outside the country because of an objection to the site, purpose or schedule of the duty." The US Supreme Court unanimously upheld this federal stature in the 1990 case, *Perpich v. Dept. of Defense*. In 2006, Congress passed the 2007 National Defense Authorization Act, which gave the president the authority to mobilize National Guard units within the U.S. without the consent of state governors. These laws and the cited Supreme Court precedent show us that the federal government has the authority to deploy National Guard units, as long as such powers are mandated by the constitution or Congress and even if it is against a governor's or state's desire. Additionally, there is a fear that this legislation could cause the State of New Hampshire to lose federal funding for our National Guard. In title 32 of the federal code, in section 108, it states: "If, within a time fixed by the President, a State fails to comply with a requirement of this title, or a regulation prescribed under this title, the National Guard of that State is barred, in whole or in part, as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law." This means if we mandate that New Hampshire's Governor withhold our National Guard units, doing so against federal code, then we could lose federal funding. Therefore, this legislation contradicts the federal government's authority over the National Guard and could very well risk our procurement of federal funding for the New Hampshire National Guard. **Vote 20-1.**

Original: House Clerk

Cc: Committee Bill File

REGULAR CALENDAR

February 12, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on State-Federal Relations and Veterans Affairs to which was referred HB 580,

AN ACT requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. Tony Labranche

FOR THE MINORITY OF THE COMMITTEE

MINORITY COMMITTEE REPORT

Committee:	State-Federal Relations and Veterans Affairs
Bill Number:	HB 580
Title:	requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas.
Date:	February 12, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

The purpose of the National Guard, as the name implies, is to guard our nation, our homeland, and our people. The job of the National Guard was not intended to fight in foreign interventions and endless wars. It is for that reason that we must curb federal encroachment and that the National Guard should only be deployed with the Governor's consent. That is what this bill does. It's time to bring our troops home.

Rep. Tony Labranche
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

State-Federal Relations and Veterans Affairs

HB 580, requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas. **OUGHT TO PASS.**

Rep. Tony Labranche for the **Minority** of State-Federal Relations and Veterans Affairs. The purpose of the National Guard as the name implies, is to guard our nation, our homeland, and our people. The job of the National Guard was not intended to fight in foreign interventions and endless wars. It is for that reason that we must curb federal encroachment and that the National Guard should only be deployed with the governor's consent. That is what this bill does. It's time to bring our troops home.

Voting Sheets

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

EXECUTIVE SESSION on HB 580

BILL TITLE: requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas.

DATE: February 12, 2021

LOB ROOM: 206/208

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Deshaies

Seconded by Rep. Harley

Vote: 20-1

Respectfully submitted,

Rep Susan DeLemus, Clerk



2021 SESSION

State-Federal Relations and Veterans Affairs

Bill #: HB580 Motion: ITL AM #: 9:28 Exec Session Date: 2/12/21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Baldasaro, Al P. Chairman	✓		
Moffett, Michael Vice Chairman	✓		
Lundgren, David G. <u>Dennis Acton</u>	✓		
Katsakiores, Phyllis M.	✓		
Rollins, Skip A.	✓		
DeLemus, Susan C. Clerk	✓		
Binford, David W.	✓		
Foster, William S.	✓		
Deshaies, Brodie S.	✓		
Harley, Tina L.	✓		
Leavitt, John A.	✓		
Massimilla, Linda A.	✓		
Piedra, Israel F.	✓		
Booras, Efstathia C.	✓		
Wilhelm, Matthew B.	✓		
Espitia, Manny	✓		
Griffith, Willis T. <u>Art Ellis</u>	✓		
Toll, Amanda Elizabeth	✓		
Labranche, Tony	.	✓	
Laughton, Stacie-Marie	✓		
Welkowitz, Lawrence	✓		

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Public Hearing

House Remote Testify

State-Federal Relations and Veterans Affairs Committee Testify List for Bill HB580 on 2021-01-29

Support: 32 Oppose: 1 Neutral: 1 Total to Testify: 4

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Grady, Kevin	jaws15@hotmail.com	603.674.0636	A Member of the Public	State Veterans Advisory Committee	Oppose	Yes (0m)	1/25/2021 11:20 AM
Craig, Kevin	kevin.craig@leg.state.nh.us	603.631.4926	An Elected Official	Myself	Support	Yes (0m)	1/25/2021 5:43 PM
Perry, Warren	warren.m.perry.nfg@mail.mil	603.225.1302	State Agency Staff	Dept of Military Affairs and Veterans Services	Neutral	Yes (0m)	1/26/2021 8:14 AM
Edwards, Jess	jess.edwards@leg.state.nh.us	603.370.7885	An Elected Official	Rockingham District 4 (Auburn, Chester, Sandown)	Support	Yes (0m)	1/29/2021 10:27 AM
Olitzky, Joshua	Joshua.olitzky@gmail.com	603.860.7812	A Member of the Public	Myself	Support	No	1/29/2021 10:59 AM
Wikstrom, Carl	Cvwikstrom@gmail.com	501.416.8305	A Member of the Public	Myself	Support	No	1/29/2021 4:20 PM
Lekas, Tony	Rep.Tony.Lekas@gmail.com	603.305.5726	An Elected Official	Myself	Support	No	1/31/2021 2:55 PM
Beene, Holly	holly.beene@yahoo.com	682.225.2425	A Member of the Public	Myself	Support	No	1/28/2021 11:14 PM
Rathbun, Eric	ericrathbun@gmail.com	860.912.3751	A Member of the Public	Myself	Support	No	1/29/2021 12:15 AM
Calitz, Louis	louis@free603.org	917.519.2528	A Member of the Public	Myself	Support	No	1/29/2021 7:21 AM
Gericke, Carla	carlagericke@gmail.com	917.607.4353	A Member of the Public	Myself	Support	No	1/29/2021 7:28 AM
Brennan, Sean	seanbrennan150@gmail.com	603.722.4027	A Member of the Public	Myself	Support	No	1/29/2021 7:32 AM
Pelletier, Nolan	Nolan@ohmelectric.net	603.965.8210	A Member of the Public	Myself	Support	No	1/29/2021 7:42 AM
Richards, Benjamin	bc_richards@yahoo.com	505.377.0512	A Member of the Public	Myself	Support	No	1/29/2021 7:58 AM
Mullin, Mickey	wolf@mickeymullin.com	609.221.8996	A Member of the Public	Myself	Support	No	1/29/2021 8:13 AM
Barger, William	bargerwb@gmail.com	603.661.0487	A Member of the Public	Myself	Support	No	1/29/2021 8:14 AM
Desmarais, Gabrielle	G.forshee95@gmail.com	603.306.1271	A Member of the Public	Myself	Support	No	1/29/2021 8:27 AM
Olding, Andrew	olding.aj@gmail.com	513.304.2916	A Member of the Public	Myself	Support	No	1/29/2021 8:31 AM
Whitmore, Bryan	Whitmorebryan0@gmail.com	603.988.8339	A Member of the Public	Myself	Support	No	1/29/2021 8:36 AM
Lambert, David	dpjsjh4@gmail.com	603.370.2168	A Member of the Public	Myself	Support	No	1/29/2021 8:40 AM
Kelley, James	jamespkelley2000@gmail.com	603.726.0860	A Member of the Public	Myself	Support	No	1/29/2021 8:41 AM
Boyle, Tim	Finneganirishman@hotmail.com	603.770.3274	A Member of the Public	Myself	Support	No	1/29/2021 8:43 AM
Ouellette, John	Hawyeah@aol.com	603.819.8322	A Member of the Public	Myself	Support	No	1/29/2021 8:49 AM
Elliott, John	john@AllyUSTRading.com	603.233.6953	A Member of the Public	Myself	Support	No	1/29/2021 8:55 AM
Mailly, Douglas	Dmailly@protonmail.com	845.558.7849	A Member of the Public	Myself	Support	No	1/29/2021 8:56 AM
Sawyer, Erik	ets138@protonmail.com	978.726.9240	A Member of the Public	Erik Sawyer	Support	No	1/29/2021 9:01 AM

2/4/2021

House Remote Testify

Kwiatek, Kevin	kevinkwiatek@gmail.com	978.766.8289	A Member of the Public	Myself	Support	No	1/29/2021 9:07 AM
Proulx, Derek	Derek.proulx1815@gmail.com	603.965.6015	A Member of the Public	Myself	Support	No	1/29/2021 9:10 AM
Olszewski, Aaron	Aronolz@yahoo.com	603.377.6635	A Member of the Public	Myself	Support	No	1/29/2021 9:22 AM
Nelson, Conrad	cnelson984@yahoo.com	603.320.6783	A Member of the Public	Myself	Support	No	1/29/2021 9:51 AM
Thomas, Nicholas	nicholas.w.thomas@uconn.edu	734.355.3870	A Member of the Public	Myself	Support	No	1/29/2021 9:54 AM
Nelson, Ashleigh	Ash91134@gmail.com	978.751.1684	A Member of the Public	Myself	Support	No	1/29/2021 9:54 AM
Horne, John	jchorne@pm.me	617.797.0585	A Member of the Public	Myself	Support	No	1/29/2021 10:01 AM
Holmes, Joshua	joshua.holmes5@gmail.com	603.315.1401	A Member of the Public	Myself	Support	No	1/29/2021 10:22 AM

Testimony

To the New Hampshire-Federal Veterans Affairs Committee,

Without taking a position, I am writing to describe the impact on our National Guard, if House Bill 580 is passed.

If passed, this bill would prohibit the Governor from releasing any New Hampshire National Guard member from the state onto Title 10 Active Duty for overseas combat missions unless the US Congress has passed an official declaration of war or taken action pursuant to Article I, Section 8, Clause 15 of the U. S. Constitution. It would also prohibit Governor from consenting to the deployment of any New Hampshire National Guard member on Title 32 Defense Support for Civil Authorities missions (e.g. Hurricane Harvey) overseas to Hawaii and the U.S. territories.

The vast majority of the funding for pay, operations and maintenance of the New Hampshire National Guard is federal. If the state were to limit by state law when and if the appropriate federal authority could call on the Guard for federal combat or DSCA missions, we believe New Hampshire could lose federal missions, equipment and funding. The impact on funding could be as much as \$100 million annually. For example:

- Military Equipment: All New Hampshire National Guard military equipment is bought, maintained and inventoried by the federal government. A very small percentage of equipment has been bought by the state, and the majority of which are used for the maintenance and upkeep of state-owned or licensed National Guard facilities.
- Major Weapon Systems: Every New Hampshire Blackhawk Helicopter, KC-46 and HIMARS Rocket system is owned by the federal government and on loan to the NHNG for training and operational purposes. The federal government also funds the costs associated with the operation of that equipment.
- Personnel Pay and Benefits: Except for instances of state active duty activations, all pay and benefits for the full and part-time uniformed and federal civilian employees of the NHNG are 100% paid for by the federal government. Additionally, the federal government pays the salaries, in whole or in part, of all but 20 of the Department's 157 state employees.
- Authorized Strength and Units: The manning of the NHNG is based upon federally authorized positions in all of our federally recognized units. The authorization to have these units and related positions could be pulled from New Hampshire by the Department of Defense and given states that do not restrict the use of their National Guard members in the manner proposed by this bill.

The US Congress has not formally declared war since World War II in 1941. One of the legal issues in the past several conflicts has been our dispute is with groups not nations as the Constitution contemplated. In the past nearly 80 years, Congress has passed legislation either authorizing use of military force or approving the President's use of force. Relevant to current and recent overseas military operations, Congress passed in 2001 after the 9/11/2001 attacks an Authorization to Use Military Force (AUMF). The 2001 AUMF empowers the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the [9/11 terror attacks]" and to use that "necessary and

appropriate force” to “prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

The 2001 AUMF has been the legal authorization used by the recent Presidents to conduct military operations in Southeast Asia. Thus, Congress has authorized US combat activities against terrorist groups for the past 19 years, even though there has not been a declaration of war. The purpose of making this reference is not to debate the legalities under the U.S. Constitution, but rather to point out that it is a complex matter, which is not easily resolved and may have those effects as described above.

Title 32 of the United States Code provides guidance concerning the National Guard, including how it is funded, how members are called to federal duty, how units are given the states, and the like. Relevant to this bill, 32 U.S.C. §108 states, in full, “If, within a time fixed by the President, a State fails to comply with a requirement of this title, or a regulation prescribed under this title, the National Guard of that State is barred, in whole or in part, as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.” Thus, there is already a mechanism in place for the President to withdraw national guard funding from a state if a state fails to comply with Title 32 of the United States Code.

Finally, the National Guard is called to active duty under several provisions in Title 10 of the U.S. Code. Only two of the seven require Governor consent and with regard to those two, 10 USC §12301(f) states, “The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.” 10 USC §12301(a), which would be the section of Title 10 that National Guard members are called to duty for combat tours, does not require the consent of the Governor. As such, this bill, if passed, would create a conflict between State and Federal laws.

We encourage the committee to consider these impacts when deciding the outcome of this legislation.

Respectfully,

Warren M. Perry
Colonel (Ret.)
Deputy Adjutant General

Archived: Monday, June 14, 2021 10:46:26 AM
From: [Nolan Pelletier](#)
Sent: Wednesday, February 10, 2021 7:44:33 PM
To: ~House State-Federal Relations and Veterans Affairs
Subject: HB580
Importance: Normal

Hello members of the committee,

I hope that you will support this legislation. The communities where we will be drawing our brothers, sisters, friends, and neighbors to be sent to fight, should have a say in the process. This will be a step in the right direction in protecting our community from those who seek to meet their own ends.

Thank you

Nolan

Sent from Samsung Galaxy smartphone.
Get [Outlook for Android](#)

Archived: Monday, June 14, 2021 10:46:25 AM
From: Erik Sawyer
Sent: Thursday, February 11, 2021 5:36:05 PM
To: ~House State-Federal Relations and Veterans Affairs
Subject: HB580
Importance: Normal

Hello to all committee members, my name is Erik Sawyer, I live in Hudson NH, and I am reaching out to urge you to support HB580. I think the least we owe our brave men and women of the NH Guard is that if we're going to send them to overseas wars, we owe it to them to follow the US constitution, and only do so if there's a proper constitutional declaration of war!

Thank you!

Sincerely, Erik Sawyer (concerned citizen)

Sent from my iPhone

Archived: Monday, June 14, 2021 10:46:26 AM
From: [Jacob Noble](#)
Sent: Wednesday, February 10, 2021 9:31:11 PM
To: [~House State-Federal Relations and Veterans Affairs](#)
Subject: HB-580
Importance: Normal

Hello Committee,

I am a new resident to New Hampshire as of August 2019. One of the reasons I moved to New Hampshire is for this state's record on protecting liberties. As a resident of Sullivan county, I am asking that you vote in favor of this resolution to prevent long term use of National Guard without congressional declaration of war.

Thank you and I look forward to getting to know the great residents and politicians of New Hampshire.

Sincerely,

Jacob Noble
Grantham, NH

Archived: Monday, June 14, 2021 10:46:25 AM
From: [Jacob BeersandLaughs](#)
Sent: Wednesday, February 10, 2021 9:35:43 PM
To: ~House State-Federal Relations and Veterans Affairs
Subject: Vote yes on HB-580
Importance: Normal

Hello committee,

The States have a fundamental, Constitutional obligation to demand that the Federal Government adhere to the rules as mandated in Article 1, Section 8 of the U.S. Constitution. Unless Congress does its duty by approving an official Declaration of War, the States are within their Constitutional rights to withhold troops.

As a resident of this great state of New Hampshire, I am asking you do your part to vote yes on this bill. It's important that we go through the proper channels to declare war and send our loved ones. When it comes to human lives at risk of war, it's best to make that a last resort option.

Eddie Belmonte
www.beersandlaughs.com
iTunes: Beers and Laughs Podcast

Archived: Monday, June 14, 2021 10:46:25 AM
From: Sean Brennan
Sent: Thursday, February 11, 2021 3:26:02 PM
To: ~House State-Federal Relations and Veterans Affairs
Subject: Defend the Guard
Importance: Normal

Hello,

I was upset to learn that we recently sent 118 NH National Guard to the Middle East of all places. I strongly disagree with this.

Coincidentally, I was happy to learn about HB 580 which is up for vote tomorrow. I urge you all to support it.

Regards,
Sean Brennan
Manchester Business and Real Estate Owner

Sent from my iPhone

Archived: Tuesday, March 16, 2021 1:38:12 PM
From: [Jacob BeersandLaughs](#)
Sent: Wednesday, February 10, 2021 9:35:43 PM
To: ~House State-Federal Relations and Veterans Affairs
Subject: Vote yes on HB-580
Importance: Normal

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Eddie Belmonte
www.beersandlaughs.com
iTunes: Beers and Laughs Podcast

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Grantham, NH

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Thank you

Nolan

Sent from Samsung Galaxy smartphone.
Get [Outlook for Android](#)

Bill as
Introduced

HB 580 - AS INTRODUCED

2021 SESSION

21-0696
05/08

HOUSE BILL **580**

AN ACT requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas.

SPONSORS: Rep. Craig, Coos 4

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This bill requires the governor to review orders calling the New Hampshire national guard to federal active duty and directs the governor to withhold approval unless the order is in response to an invasion of the United States, an insurrection, or otherwise within the Constitutional authority of the federal government.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT requiring the approval of the governor before the New Hampshire National Guard can be deployed overseas.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Call of National Guard to Federal Active Duty for Overseas Deployment. Amend
2 RSA 110-B by inserting after section 5 the following new section:

3 110-B:5-a Call of National Guard to Federal Active Duty for Overseas Deployment.

4 I. The governor shall withhold or withdraw approval of the transfer of the national guard to
5 federal control for overseas deployment in the absence of:

6 (a) A military invasion of the United States;

7 (b) An insurrection; or

8 (c) A calling forth of the guard by the federal government in a manner provided for by
9 Congress to execute the laws of the Union, provided that said laws were made in pursuance of the
10 delegated powers in the Constitution of the United States.

11 II. The governor shall examine each federal order that places the national guard on active
12 duty to determine whether the order is constitutional according to Article I, Section 8, Clause 15 of
13 the Constitution of the United States. If the governor determines that the order is not
14 Constitutional, he or she shall take all appropriate action to prevent the national guard from being
15 placed or kept on federal active duty.

16 III. Within 30 days of the issuance of an order calling the national guard to federal active
17 duty, the governor shall submit a report to the standing committees of the legislature with specified
18 subject matter jurisdiction over military affairs that summarizes his or her review of the order, the
19 order's compliance with the criteria established in this section, and any action he or she has taken or
20 plans to take in response to that review.

21 2 Effective Date. This act shall take effect 60 days after its passage.