

House Bill 1450

By: Representatives Jackson of the 68<sup>th</sup>, Reese of the 140<sup>th</sup>, Mitchell of the 88<sup>th</sup>, Bell of the 75<sup>th</sup>, Scott of the 76<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 2 of Title 38 of the Official Code of Georgia Annotated,  
2 relating to state militia generally, so as to provide for oversight of any deployment of the  
3 National Guard by the Governor for state active duty or federal mobilization; to provide for  
4 notification, briefing, and reporting requirements; to require approval by the General  
5 Assembly prior to certain deployments; to provide for limitations on using the National  
6 Guard in certain drug operations and for active combat; to provide for construction; to  
7 provide for legislative findings; to provide for definitions; to provide for related matters; to  
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 The General Assembly finds that:

12 (1) Article I, Section 8, Clause 11 of the United States Constitution grants Congress the  
13 exclusive power to declare war;

14 (2) Article I, Section 8, Clauses 15 and 16 of the United States Constitution authorize  
15 calling forth the militia only to execute the laws of the union, to suppress insurrections, and  
16 to repel invasions;

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- 17 (3) The Tenth Amendment of the United States Constitution reserves powers not delegated  
18 to the United States to the states or the people; and  
19 (4) The Georgia National Guard remains under state authority unless lawfully federalized  
20 pursuant to constitutional authority.

21 **SECTION 2.**

22 Article 1 of Chapter 2 of Title 38 of the Official Code of Georgia Annotated, relating to state  
23 militia generally, is amended by revising Code Section 38-2-6, relating to ordering organized  
24 militia into active state service, Governor's duties, local officials' duties, declaration of state  
25 of emergency, and pay, as follows:

26 "38-2-6.

27 (a) Except as otherwise provided in Code Section 38-2-6.2:

28 (1) The Governor shall have power, in case of invasion, disaster, insurrection, riot,  
29 breach of the peace, combination to oppose the enforcement of the law by force or  
30 violence, or imminent danger thereof, or other grave emergency, to order all or any part  
31 of the organized militia into the active service of the state for such period, to such extent,  
32 and in such manner as he or she may deem necessary. Such power shall include the  
33 power to order the organized militia or any part thereof to function under the operational  
34 control of the United States army, navy, or air force commander in charge of the defense  
35 of any area within the state which is invaded or attacked or is or may be threatened with  
36 invasion or attack; and

37 ~~(b)~~(2) Whenever any judge of a superior, city, or state court, sheriff, or mayor of a  
38 municipality shall apprehend the outbreak of insurrection, riot, breach of the peace, or  
39 combination to oppose the enforcement of the law by force or violence within the  
40 jurisdiction of which such officer is by law the conservator of the peace, or in the event  
41 of disaster or other grave emergency, it shall be the duty of the judge, sheriff, or mayor,  
42 when it appears that the unlawful combination or disaster has progressed beyond the

43 control of the civil authorities, to notify the Governor, and the Governor may then, in his  
44 or her discretion, if he or she deems the apprehension well founded or the disaster or  
45 emergency of sufficient magnitude, order into the active service of the state for such  
46 period, to such extent, and in such manner as he or she may deem necessary all or any  
47 part of the organized militia.

48 ~~(c)~~(b) When the Governor orders into the active service of the state all or any portion of  
49 the organized militia as provided in this Code section, he or she shall declare a state of  
50 emergency in such locality and it shall be the duty of the Governor to confirm such  
51 declaration and order in writing which shall state the area into which the force of the  
52 organized militia has been ordered.

53 ~~(d)~~(c) The compensation of all officers and enlisted men while on duty or assembled  
54 pursuant to this Code section shall be paid in the manner prescribed by Code Section  
55 38-2-250."

56 **SECTION 3.**

57 Said article is further amended by adding a new Code section to read as follows:

58 "38-2-6.2.

59 (a) As used in this Code section, the term:

60 (1) 'Active combat' means direct participation in an armed conflict or offensive operation  
61 outside of the United States. Such term shall not include training, humanitarian missions,  
62 disaster relief, logistics, medical support, cyber defense, intelligence gathering, or  
63 homeland defense.

64 (2) 'Federal mobilization' means the activation of National Guard members by the  
65 President of the United States or Congress for federal active duty service.

66 (3) 'State active duty' means full-time duty in the organized militia of this state, including  
67 the National Guard, under an order of the Governor or otherwise issued by authority of  
68 law when such duty is paid for with funds of the state.

69 (b)(1) Within 48 hours of ordering the National Guard into state active duty, the  
70 Governor shall provide written notification to the Speaker of the House, the President of  
71 the Senate, and the Attorney General. Such notification shall include the following:

72 (A) Specific legal authority for the deployment;

73 (B) Purpose and scope of the mission;

74 (C) Geographic area of the mission;

75 (D) Anticipated duration of the mission;

76 (E) Estimated cost to the state; and

77 (F) Total number of members of the National Guard deployed.

78 (2) Within seven days of federal mobilization of any part of the National Guard, the  
79 Governor shall provide written notification to the Speaker of the House, the President of  
80 the Senate, and the Attorney General. Such notification shall include an assessment of  
81 the impact of the federal mobilization on state emergency readiness. The Governor shall  
82 further implement measures to ensure the continuity of state emergency preparedness and  
83 public safety operations during such mobilization.

84 (c) Prior to the deployment of 100 or more members of the National Guard, or as soon as  
85 practicable following deployment in the event of an emergency that requires immediate  
86 deployment, the Governor or the adjutant general shall provide a comprehensive briefing  
87 regarding the necessity, legal basis, and mission parameters of such deployment to the  
88 Attorney General, members of the House Committee on Defense and Veterans Affairs, and  
89 members of the Senate Veterans, Military, and Homeland Security Committee.

90 (d)(1) No deployment of any member of the National Guard shall exceed 14 consecutive  
91 days, nor shall any deployment under subsection (c) of this Code section exceed the  
92 anticipated duration reported pursuant to subsection (b) of this Code section, unless the  
93 General Assembly gives prior approval.

94 (2) The approval required under paragraph (1) of this subsection shall be granted only  
95 by a joint resolution passed by a simple majority of both chambers of the General

96 Assembly. If the General Assembly is not in session, the Governor shall summon the  
97 General Assembly for an emergency session for the sole purpose of considering the  
98 continuation of the deployment under this subsection.

99 (3) If approval is requested under this subsection and not granted, the deployment shall  
100 be terminated and all members of the National Guard shall be withdrawn.

101 (e) No member of the National Guard shall be released into active combat under Title 10  
102 of the United States Code unless Congress has enacted a formal declaration of war or has  
103 taken specific official action pursuant to Article I, Section 8, Clause 11 of the United States  
104 Constitution, and such declaration or action is to repel an invasion, suppress an  
105 insurrection, or execute federal law pursuant to Article I, Section 8, Clause 15 of the United  
106 States Constitution.

107 (f) The role of the National Guard in any counterdrug operation shall be limited to  
108 supporting law enforcement. Members of the National Guard shall not conduct or direct  
109 any law enforcement activities, including, but not limited to, searches, seizures, or arrests,  
110 unless expressly authorized by law and consistent with the Constitution of the United States  
111 and the Constitution of this state.

112 (g) The Governor shall not deploy any member of the National Guard to intimidate,  
113 threaten, or coerce any person for the purpose of interfering with the right to vote.

114 (h) The adjutant general shall submit an annual report to the General Assembly no later  
115 than January 31 each year. Such report shall include:

116 (1) All federal and state deployments of the National Guard during the preceding year;

117 (2) Retention and recruitment levels for the National Guard during the preceding year;

118 (3) Readiness status of the National Guard;

119 (4) Funding and equipment needs of the National Guard; and

120 (5) Any other matters that the adjutant general deems relevant to the operational  
121 capability of the National Guard.

122 (i) Nothing in this Code section shall be construed to limit the lawful authority of the  
123 Governor to deploy the National Guard for immediate life-saving purposes or as required  
124 by the United States Constitution during a declared national emergency."

125 **SECTION 4.**

126 Said article is further amended in Code Section 38-2-10, relating to national guard, drug law  
127 enforcement, medical care, and youth opportunity programs, by revising paragraph (1) of  
128 subsection (a) as follows:

129 "(1) Except as otherwise provided in Code Section 38-2-6.2, authorize ~~Authorize~~ or  
130 direct the Georgia National Guard to assist and support federal, state, and local law  
131 enforcement agencies in drug interdiction, counterdrug activities, and drug demand  
132 reduction;"

133 **SECTION 5.**

134 Said article is further amended in Code Section 38-2-11, relating to federally approved  
135 counterdrug law enforcement plans, by revising subsection (b) as follows:

136 "(b) The Governor may authorize the use of ~~Georgia~~ National Guard personnel and  
137 equipment outside the boundaries of the state under this Code section, if:

- 138 (1) A request is received from the governor of another state;
- 139 (2) The request evidences that the requesting governor has authority to make the request;
- 140 (3) The attorney general of the requesting state has acknowledged the Governor's  
141 authority and has certified that National Guard personnel requested from this state while  
142 performing duty in the requesting state shall have the same immunity from liability and  
143 prosecution as do National Guard personnel of the requesting state performing such duty;  
144 and
- 145 (4) The request relates to the performance of duty in a federally approved counterdrug  
146 law enforcement plan as authorized and funded under 32 U.S.C. Section 112; provided,

147 however, that the role of the National Guard in any such plan shall comply with  
148 subsection (f) of Code Section 38-2-6.2."

149 **SECTION 6.**

150 Said article is further amended in Code Section 38-2-25, relating to assemblies, annual  
151 training, special duty, active duty, and declaration of emergency, by revising subsections (c)  
152 and (d) as follows:

153 "(c) Except as otherwise provided in Code Section 38-2-6.2, members ~~Members~~ and units  
154 of the organized militia may be ordered by the Governor to state active duty when in his  
155 judgment there exists a possibility of imminent danger of disaster, riot, insurrection, or  
156 gross breach of the peace; provided, however, that, when so called to state active duty,  
157 members and units may not be deployed to quell riots, insurrection, or gross breach of the  
158 peace or to maintain order until an emergency has first been declared as provided in Code  
159 Section 38-2-6 or 45-12-30.

160 (d) Except as otherwise provided in Code Section 38-2-6.2, members ~~Members~~ of the  
161 organized militia, with their consent, may be ordered by the Governor to state active duty  
162 for any lawful purpose or purposes and without pay and allowances or other compensation,  
163 except as specifically set forth in such orders, but with all other privileges, rights, benefits,  
164 and immunities provided by the military laws or other statutes of this state; provided,  
165 however, that, when so called to state active duty, members of the organized militia may  
166 not be deployed to quell riots, insurrections, or a gross breach of the peace or to maintain  
167 order until an emergency has first been declared as provided in Code Section 38-2-6 or  
168 45-12-30."

169 **SECTION 7.**

170 Said article is further amended in Code Section 38-2-90, relating to service outside state and  
171 application of state military law to such service, by revising subsection (a) as follows:

172 "(a) Except as otherwise provided in Code Section 38-2-6.2, the ~~The~~ Governor may order  
173 the organized militia or any part thereof to serve outside the borders of the state or of the  
174 United States in order to perform military duty of every description; to participate in  
175 parades, reviews, cruises, conferences, encampments, maneuvers, or other training; to  
176 participate in small arms and other military competitions; and to attend service schools."

177 **SECTION 8.**

178 Said article is further amended in Code Section 38-2-91, relating to rendering assistance to  
179 another state's armed forces, Governor's request and recall, and requesting assistance for this  
180 state, by revising subsection (a) as follows:

181 "(a) Except as otherwise provided in Code Section 38-2-6.2, upon ~~Upon~~ the request of the  
182 governor of another state, the Governor in his discretion may order all or any portion of the  
183 organized militia to assist the military or police forces of the other state who are actually  
184 engaged in defending the other state. Such forces may be recalled by the Governor at his  
185 discretion."

186 **SECTION 9.**

187 All laws and parts of laws in conflict with this Act are repealed.