
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2402 Session of
2008

INTRODUCED BY PAYTON, COHEN, DALEY, HARHAI, HARKINS, JAMES,
JOSEPHS, MANDERINO, MCGEEHAN, MYERS, PETRONE, SABATINA,
SIPTROTH, K. SMITH, SOLOBAY, THOMAS, J. WHITE, WILLIAMS AND
YOUNGBLOOD, MARCH 27, 2008

REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS, MARCH 27, 2008

AN ACT

1 Amending Title 51 (Military Affairs) of the Pennsylvania
2 Consolidated Statutes, relating to the withdrawal of
3 Pennsylvania National Guard military forces from Iraq and
4 Federal deployment of the National Guard.

5 The General Assembly finds and declares that:

6 (1) Under clause 15 of section 8 of Article I of the
7 Constitution of the United States, Congress may call forth
8 the militia to execute the laws of the union, suppress
9 insurrections and repel invasions.

10 (2) Since 1933, Federal law has provided that persons
11 enlisting in a state National Guard unit simultaneously
12 enlist in the Army National Guard. The enlistees retain their
13 status as state guard members unless and until ordered to
14 active Federal duty and then revert to state status when
15 relieved from Federal service.

16 (3) In 1986, Congress and the President of the United
17 States enacted the Montgomery Amendment, which provides that

1 a governor cannot withhold consent with regard to active duty
2 outside the United States because of any objection to the
3 location, purpose, type or schedule of such duty.

4 (4) Under the Constitution of the United States, each
5 state's National Guard unit is controlled by the Governor but
6 can be called up for Federal duty by the President, provided
7 that the President is acting pursuant to the Constitution of
8 the United States and the laws of the United States.

9 (5) The War Powers Resolution (Public Law 93-148, 50
10 U.S.C. § 1541 et seq.) specifically limits the power of the
11 President to wage war without the approval of Congress.

12 (6) In October 2002, a joint resolution of Congress
13 authorized military force under the Authorization for the Use
14 of Military Force Against Iraq Resolution of 2002 (Public Law
15 107-243, 116 Stat. 1498) (AUMF), a law adopted in response to
16 a presidential request under the War Powers Resolution. The
17 AUMF stated in part that the President is authorized to use
18 the armed forces of the United States as he determines to be
19 necessary and appropriate in order to:

20 (i) defend the national security of the United
21 States against the continuing threat posed by Iraq; and

22 (ii) enforce all relevant United Nations Security
23 Council resolutions regarding Iraq.

24 (7) The AUMF contained neither a termination date, nor a
25 process or procedure to determine when the authorization
26 should terminate.

27 (8) The armed forces, including members of the
28 Pennsylvania National Guard and guard members from other
29 states, have long since addressed the purposes recited under
30 the AUMF, Iraq does not pose a continuing threat to the

1 national security of the United States and there is no extant
2 United Nations Security Council resolution to be implemented.

3 (9) The President may not maintain armed forces, in
4 particular members of the Pennsylvania National Guard, in
5 Iraq other than for the purposes set forth by Congress in the
6 AUMF. Without a specific date for withdrawal of the armed
7 forces from Iraq in the AUMF or a method or formula for
8 determining the time for withdrawal and in the absence of
9 congressional legislation curing these omissions, the
10 President is required to order the withdrawal of troops
11 within a reasonable time and in a reasonable manner. The
12 President has taken no such action.

13 (10) Other than the AUMF, there is no authority under
14 the Constitution of the United States or the laws of the
15 United States for the continued presence of Pennsylvania
16 National Guard members in Iraq.

17 (11) The maintenance of Pennsylvania National Guard
18 members in Iraq beyond the time and scope set forth in the
19 AUMF has resulted in significant harm to guard members and
20 their families, including death and injury, loss of time
21 together and financial hardship.

22 (12) Congress should revisit the 1986 Montgomery
23 Amendment and adopt legislation that restores the powers of
24 the governors of the several states to withhold consent to
25 federalization of their National Guards, except where a
26 declaration of war has been adopted or where the United
27 States faces attack or invasion and the President has invoked
28 powers authorized by an act of Congress to address those
29 circumstances.

30 (13) Since the AUMF has expired, the Governor of

1 Pennsylvania, as Commander-in-Chief of the Commonwealth,
2 should take all necessary steps to withdraw all members of
3 the Pennsylvania National Guard from Iraq, subject only to
4 conditions of time and manner specifically required to assure
5 their safety and well-being during removal operations.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 51 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:

10 § 2315.1. Limitation of Pennsylvania National Guard service in
11 wars not statutorily or constitutionally authorized.

12 (a) General rule.--The Pennsylvania National Guard shall be
13 limited to service on behalf of the Commonwealth, unless called
14 into Federal service pursuant to a declaration of war or a duly
15 enacted Federal statute authorizing the use of military force.

16 (b) Authorization of Attorney General to appear in court.--
17 The Attorney General is authorized to appear in any Federal or
18 State court with jurisdiction over the deployment of the
19 Pennsylvania National Guard, to defend any decision of the
20 Governor and Adjutant General with respect to their decision to
21 deploy or not deploy the Pennsylvania National Guard.

22 Section 2. This act shall take effect immediately.