

110TH CONGRESS
2D SESSION

S. _____

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

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

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 2008”.

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 as-
11 sistance 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 Director of the Joint Staff of the Na-
22 tional Guard Bureau under section 10505 of this
23 title.

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

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

5 **“§ 10544. National Guard training and equipment:**
6 **budget for military assistance to civil au-**
7 **thorities and for other domestic oper-**
8 **ations**

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

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

20 “(1) The development and implementation of
21 doctrine and training requirements applicable to the
22 assistance and operations described in subsection (a)
23 for such fiscal year.

24 “(2) The acquisition of equipment, materiel,
25 and other supplies and services necessary for the

1 provision of such assistance and such operations in
2 such fiscal year.”.

3 (c) CLERICAL AMENDMENTS.—

4 (1) The table of sections at the beginning of
5 chapter 1011 of such title is amended by inserting
6 after the item relating to section 10503 the following
7 new item:

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

8 (2) The table of sections at the beginning of
9 chapter 1013 of such title is amended by adding at
10 the end the following new item:

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

11 **SEC. 4. REDESIGNATION OF POSITIONS OF DIRECTOR OF**
12 **THE ARMY NATIONAL GUARD, DIRECTOR OF**
13 **THE AIR NATIONAL GUARD, AND ASSOCIATED**
14 **POSITIONS.**

15 (a) REDESIGNATION.—Section 10506 of title 10,
16 United States Code, is amended—

17 (1) by striking “Director, Army National
18 Guard” each place it appears and inserting “Vice
19 Chief, Army National Guard”;

20 (2) by striking “Deputy Director, Army Na-
21 tional Guard” each place it appears and inserting
22 “Deputy Vice Chief, Army National Guard”;

1 (3) by striking “Director, Air National Guard”
2 each place it appears and inserting “Vice Chief, Air
3 National Guard”; and

4 (4) by striking “Deputy Director, Air National
5 Guard” each place it appears and inserting “Deputy
6 Vice Chief, Air National Guard”.

7 (b) CONFORMING AMENDMENT.—Section
8 14512(a)(2)(D) of such title is amended by striking “Di-
9 rector of the Army National Guard, or Director of the Air
10 National Guard” and inserting “Vice Chief of the Army
11 National Guard, or Vice Chief of the Air National Guard”.

12 (c) REFERENCES.—

13 (1) DIRECTOR, ARMY NATIONAL GUARD.—Any
14 reference in a law, regulation, document, paper, or
15 other record of the United States to the Director of
16 the Army National Guard shall be deemed to be a
17 reference to the Vice Chief of the Army National
18 Guard.

19 (2) DEPUTY DIRECTOR, ARMY NATIONAL
20 GUARD.—Any reference in a law, regulation, docu-
21 ment, paper, or other record of the United States to
22 the Deputy Director of the Army National Guard
23 shall be deemed to be a reference to the Deputy Vice
24 Chief of the Army National Guard.

1 (3) DIRECTOR, AIR NATIONAL GUARD.—Any
2 reference in a law, regulation, document, paper, or
3 other record of the United States to the Director of
4 the Air National Guard shall be deemed to be a ref-
5 erence to the Vice Chief of the Air National Guard.

6 (4) DEPUTY DIRECTOR, AIR NATIONAL
7 GUARD.—Any reference in a law, regulation, docu-
8 ment, paper, or other record of the United States to
9 the Deputy Director of the Air National Guard shall
10 be deemed to be a reference to the Deputy Vice
11 Chief of the Air National Guard.

12 **SEC. 5. TREATMENT OF CERTAIN SERVICE AS JOINT DUTY**
13 **EXPERIENCE.**

14 (a) VICE CHIEFS, ARMY AND AIR NATIONAL
15 GUARD.—Section 10506(a)(3) of title 10, United States
16 Code, as amended by section 4(a) of this Act, is further
17 amended—

18 (1) by redesignating subparagraphs (C), (D),
19 and (E) as subparagraphs (D), (E), and (F), respec-
20 tively; and

21 (2) by inserting after subparagraph (B) the fol-
22 lowing new subparagraph (C):

23 “(C) Service of an officer as adjutant general shall
24 be treated as joint duty experience for purposes of assign-

1 ment or promotion to any position designated by law as
2 open to a National Guard general officer.”.

3 (b) ADJUTANTS GENERAL AND SIMILAR OFFI-
4 CERS.—The service of an officer of the Armed Forces as
5 adjutant general, or as an officer (other than adjutant
6 general) of the National Guard of a State who performs
7 the duties of adjutant general under the laws of such
8 State, shall be treated as joint duty or joint duty experi-
9 ence for purposes of any provisions of law required such
10 duty or experience as a condition of assignment or pro-
11 motion.

12 (c) ANNUAL REPORTS ON DUTY IN JOINT FORCE
13 HEADQUARTERS TO QUALIFY AS JOINT DUTY EXPERI-
14 ENCE.—Not later than six months after the date of the
15 enactment of this Act, and annually thereafter, the Chief
16 of the National Guard Bureau shall, in consultation with
17 the adjutants general of the National Guard, submit to
18 the Chairman of the Joint Chiefs of Staff and to Congress
19 a report setting forth the recommendations of the Chief
20 of the National Guard Bureau as to which duty of officers,
21 and which duty of enlisted members, of the National
22 Guard in the Joint Force Headquarters of the National
23 Guard of the States should qualify as joint duty or joint
24 duty experience for purposes of the provisions of law re-

1 quiring such duty or experience as a condition of assign-
2 ment or promotion.

3 (d) ANNUAL REPORTS ON JOINT EDUCATION
4 COURSES.—Not later than six months after the date of
5 the enactment of this Act, and annually thereafter, the
6 Chairman of the Joint Chiefs of Staff shall submit to Con-
7 gress a report setting forth information on the joint edu-
8 cation courses available through the Department of De-
9 fense for purposes of the pursuit of joint careers by offi-
10 cers in the Armed Forces. Each report shall include, for
11 the preceding year, the following:

12 (1) A list and description of the joint education
13 courses so available during such year.

14 (2) A list and description of the joint education
15 courses listed under paragraph (1) that are available
16 to and may be completed by officers of the reserve
17 components of the Armed Forces in other than an
18 in-resident duty status under title 10, United States
19 Code, or title 32, United States Code.

20 (3) For each course listed under paragraph (1),
21 the number of officers from each Armed Force who
22 pursued such course during such year, including the
23 number of officers of the Army National Guard, and
24 of the Air National Guard, who pursued such course.

1 **SEC. 6. ENHANCEMENT OF AUTHORITIES RELATING TO**
2 **THE UNITED STATES NORTHERN COMMAND**
3 **AND OTHER COMBATANT COMMANDS.**

4 (a) **COMMANDS RESPONSIBLE FOR SUPPORT TO**
5 **CIVIL AUTHORITIES IN THE UNITED STATES.**—The
6 United States Northern Command and the United States
7 Pacific Command shall be the combatant commands of the
8 Armed Forces that are principally responsible for the sup-
9 port of civil authorities in the United States by the Armed
10 Forces.

11 (b) **DISCHARGE OF RESPONSIBILITY.**—In dis-
12 charging the responsibility set forth in subsection (a), the
13 Commander of the United States Northern Command and
14 the Commander of the United States Pacific Command
15 shall each—

16 (1) in consultation with and acting through the
17 Chief of the National Guard Bureau and the Joint
18 Force Headquarters of the National Guard of the
19 State or States concerned, assist the States in the
20 employment of the National Guard under State con-
21 trol, including National Guard operations conducted
22 in State active duty or under title 32, United States
23 Code; and

24 (2) facilitate the deployment of the Armed
25 Forces on active duty under title 10, United States
26 Code, as necessary to augment and support the Na-

1 tional Guard in its support of civil authorities when
2 National Guard operations are conducted under
3 State control, whether in State active duty or under
4 title 32, United States Code.

5 (c) MEMORANDUM OF UNDERSTANDING.—

6 (1) MEMORANDUM REQUIRED.—Not later than
7 180 days after the date of the enactment of this Act,
8 the Commander of the United States Northern Com-
9 mand, the Commander of the United States Pacific
10 Command, and the Chief of the National Guard Bu-
11 reau shall, with the approval of the Secretary of De-
12 fense, jointly enter into a memorandum of under-
13 standing setting forth the operational relationships,
14 and individual roles and responsibilities, during re-
15 sponses to domestic emergencies among the United
16 States Northern Command, the United States Pa-
17 cific Command, and the National Guard Bureau.

18 (2) MODIFICATION.—The Commander of the
19 United States Northern Command, the Commander
20 of the United States Pacific Command, and the
21 Chief of the National Guard Bureau may from time
22 to time modify the memorandum of understanding
23 under this subsection to address changes in cir-
24 cumstances and for such other purposes as the Com-
25 mander of the United States Northern Command,

1 the Commander of the United States Pacific Com-
2 mand, and the Chief of the National Guard Bureau
3 jointly consider appropriate. Each such modification
4 shall be subject to the approval of the Secretary of
5 Defense.

6 (d) **AUTHORITY TO MODIFY ASSIGNMENT OF COM-**
7 **MAND RESPONSIBILITY.**—Nothing in this section shall be
8 construed as altering or limiting the power of the Presi-
9 dent or the Secretary of Defense to modify the Unified
10 Command Plan in order to assign all or part of the respon-
11 sibility described in subsection (a) to a combatant com-
12 mand other than the United States Northern Command
13 or the United States Pacific Command.

14 (e) **REGULATIONS.**—The Secretary of Defense shall
15 prescribe regulations for purposes of aiding the expedi-
16 tious implementation of the authorities and responsibilities
17 in this section.

18 **SEC. 7. STATE CONTROL OF FEDERAL MILITARY FORCES**
19 **ENGAGED IN ACTIVITIES WITHIN THE STATES**
20 **AND POSSESSIONS.**

21 (a) **IN GENERAL.**—Part I of subtitle A of title 10,
22 United States Code, is amended by inserting after chapter
23 15 the following new chapter:

1 **“CHAPTER 16—CONTROL OF THE ARMED**
2 **FORCES IN ACTIVITIES WITHIN THE**
3 **STATES AND POSSESSIONS**

“Sec.

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

4 **“§ 341. Tactical control of the armed forces engaged**
5 **in activities within the States and posses-**
6 **sions: emergency response activities**

7 “(a) IN GENERAL.—The Secretary of Defense shall
8 prescribe in regulations policies and procedures to assure
9 that tactical control of the armed forces on active duty
10 within a State or possession is vested in the governor of
11 the State or possession, as the case may be, when such
12 forces are engaged in emergency response activities within
13 such State or possession.

14 “(b) DISCHARGE THROUGH JOINT FORCE HEAD-
15 QUARTERS.—The policies and procedures required under
16 subsection (a) shall provide for the discharge of tactical
17 control by the governor of a State or possession as de-
18 scribed in that subsection through the Joint Force Head-
19 quarters of the National Guard in the State or possession,
20 as the case may be, acting through the officer of the Na-
21 tional Guard in command of the Headquarters.

22 “(c) POSSESSIONS DEFINED.—Notwithstanding any
23 provision of section 101(a), in this section, the term ‘pos-

1 sessions’ means the Commonwealth of Puerto Rico, Guam,
2 and the Virgin Islands.”.

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

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

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

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

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

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

1 (d) CERTAIN JOINT TASK FORCE POSITIONS.—

2 (1) IN GENERAL.—Of the officers serving in the
3 positions specified in each subparagraph of para-
4 graph (2), as least one such officer under each sub-
5 paragraph shall be an officer in the Army National
6 Guard of the United States or an officer in the Air
7 National Guard of the United States.

8 (2) COVERED POSITIONS.—The positions speci-
9 fied in this paragraph are:

10 (A) Commander, Joint Task Force Alaska,
11 and Deputy Commander, Joint Task Force
12 Alaska.

13 (B) Commander, Joint Task Force Civil
14 Support, and Deputy Commander, Joint Task
15 Force Civil Support.

16 (C) Commander, Joint Task Force North,
17 and Deputy Commander, Joint Task Force
18 North.