

I am writing on behalf of the Oregon National Guard Association to express our strong opposition to Senate Bill 667, which seeks to prohibit the Governor from deploying the Oregon National Guard into active duty unless the United States Congress has declared war or has explicitly called forth the militia for specific constitutional purposes. While we understand the intent to ensure that our state's military forces are utilized appropriately, we believe this bill will have unintended and detrimental consequences for both Oregon and our nation.

Erosion of Executive Flexibility

The Governor of Oregon holds the responsibility to protect the welfare and safety of our citizens. This includes the authority to deploy the National Guard in response to emergencies, natural disasters, and situations that may not fall under a formal declaration of war. By restricting the Governor's ability to mobilize the Guard, SB 667 could complicate and hinder timely responses to crises that require immediate action, thereby compromising public safety.

Impact on National Security and Readiness

The National Guard serves as a critical component of our national defense strategy. Guard units frequently participate in federal missions that support national security interests, often in situations where a formal declaration of war is not feasible or practical. SB 667's limitations could impede Oregon's ability to contribute effectively to these missions, potentially weakening our collective security posture and undermining the state's longstanding tradition of service.

Legal and Constitutional Concerns

Proponents of this legislation refer to Article 1, section 8, clauses 11 and 15 which outline congressional powers "to declare war" and "provide for calling forth the militia" respectively. But they fail to mention clause 12, "To raise and support Armies". The National Guard Mobilization Act of 1933 established the National Guard of the United States as a federal reserve force of the U.S. Army. This established the dual nature of the National Guard as both the Organized Militia of the State and as a Federal Reserve of the Active Component. When the president calls up the National Guard for federal missions overseas, he is not "calling forth the militia", he is "raising an army".

This issue has been litigated and settled at the U.S. Supreme Court. This Federal power was litigated in the Selective Draft Law Cases, 245 U.S. 366 (1918) relating to World War I call-ups. It was more recently and definitively decided in *Perpich v. Dep't of Defense*, 496 U.S. 334 (1990) relating to a training mission outside of the United States.

States are under no obligation to dually enlist their militia members into the Armed Forces of the United States. They are permitted to have a militia that is exempt from being drafted into the Armed Forces of the United States. The Federal statutes call this a "state defense

force.” In Oregon, that organization is called the Oregon Civil Defense Force. In *Perpich*, the court noted, “As long as that provision remains in effect, there is no basis for an argument that the federal statutory scheme deprives [a state] of any constitutional entitlement to a separate militia of its own.” While state defense forces can be called up for Federal service under the militia clause, they cannot be activated under the power to raise and support armies.

Potential Economic and Community Implications

The Oregon National Guard not only plays a vital role in defense but also contributes significantly to our local communities through employment, education, and emergency response. Restricting the deployment of the Guard could result in reduced federal funding and support, adversely affecting the livelihoods of service members and the well-being of their families. Additionally, diminished Guard presence in federal missions could lead to a loss of valuable training and experience, further impacting the effectiveness of our state’s military readiness.

95% of Oregon National Guard funding is derived from the federal government – inclusive of payroll, military construction, equipment, training/schools, infrastructure. In the 2023-2025 biennium, the general fund budget for the Oregon Military Department / Oregon National Guard was approximately \$43 million. During that same period, the Oregon National Guard will spend more than \$1Billion in federal funds in Oregon. The federal government is not funding the National Guard out of the kindness of its heart. It is doing so to have a Reserve Component to the Armed Forces. If states do not want to participate, they will have to fund their own militias.

In conclusion, while the desire to ensure proper oversight of military deployments is commendable, Senate Bill 667 introduces constraints that could jeopardize the safety, security, and well-being of Oregonians and our nation. I respectfully urge you to consider these concerns and oppose the passage of SB 667.

Thank you for your attention to this critical matter.

Sincerely,

Kevin Dial
Executive Director
Oregon National Guard Association