



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1305

H.P. 957

House of Representatives, March 24, 2011

**An Act To Limit the Use of the National Guard to Situations
Specifically Authorized by the United States Constitution**

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative LIBBY of Waterboro.
Cosponsored by Senator BARTLETT of Cumberland and
Representatives: CEBRA of Naples, CRAFTS of Lisbon, GIFFORD of Lincoln, HINCK of
Portland, McCABE of Skowhegan, O'CONNOR of Berwick, SIROCKI of Scarborough,
Senator: JACKSON of Aroostook.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 37-B MRSA §190** is enacted to read:

3 **§190. Maine National Guard deployment for federal purposes**

4 **1. Findings.** The Legislature finds the following.

5 A. Under the United States Constitution, Article II, Section 2, the President of the
6 United States is the Commander in Chief of the militia of the several states but only
7 when that militia is called into actual service of the United States pursuant to the
8 United States Constitution.

9 B. The United States Constitution, Article I, Section 8, delegates to the United States
10 Congress the power to provide for calling forth the militia only in the following 3
11 situations:

12 (1) To execute the laws of the union;

13 (2) To suppress insurrections; and

14 (3) To repel invasions.

15 C. The United States Constitution, Amendment X, which states that the "powers not
16 delegated to the United States by the Constitution, nor prohibited by it to the States,
17 are reserved to the States respectively, or to the people," defines the total scope of
18 federal power as being that which has been delegated by the people of the several
19 states to the Federal Government in the United States Constitution.

20 **2. Governor to withhold approval of the transfer of the Maine National Guard.**

21 The Governor shall withhold approval of the transfer of the Maine National Guard to
22 federal control in the absence of:

23 A. A military invasion of the United States;

24 B. An insurrection; or

25 C. A calling forth of the National Guard by the United States Congress, in a manner
26 authorized by the United States Constitution, to execute the laws of the United States,
27 as long as those laws were made in accordance with the powers delegated to the
28 Federal Government in the United States Constitution.

29 **3. Review of federal orders.** The Governor shall examine every federal order that
30 places the Maine National Guard on federal active duty, including any order that is in
31 effect on the effective date of this section, to determine whether the order complies with
32 the requirements of subsection 2 and the United States Constitution, Article I, Section 8.
33 If the Governor determines that the order does not meet the requirements of subsection 2
34 or the United States Constitution, the Governor shall take all appropriate action to prevent
35 the Maine National Guard from being placed or kept on federal active duty.

36 **4. Report.** Within 30 days of the review completed pursuant to subsection 3, the
37 Governor shall submit a report to the joint standing committee of the Legislature having
38 jurisdiction over military affairs that summarizes the Governor's review of every order

1 that placed the Maine National Guard on federal active duty, including any order that is in
2 effect on the effective date of this section, and any action the Governor has taken in
3 response to that review.

4

SUMMARY

5 This bill requires the Governor to withhold or withdraw approval of the transfer of
6 the Maine National Guard to federal control in the absence of an explicit authorization in
7 pursuance of the powers delegated to the Federal Government in the United States
8 Constitution, Article I, Section 8.