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

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

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

§ 190. Maine National Guard deployment for federal purposes

1. Findings. The Legislature finds the following.

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

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

(1) To execute the laws of the union;

(2) To suppress insurrections; and

(3) To repel invasions.

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

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

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

A. A military invasion of the United States;

B. An insurrection; or

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

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

4. Report. Within 30 days of the review completed pursuant to subsection 3, the Governor shall submit a report to the joint standing committee of the Legislature having jurisdiction over military affairs that summarizes the Governor's review of every order that placed the Maine National Guard on federal active duty, including any order that is in effect on the effective date of this section, and any action the Governor has taken in response to that review.

SUMMARY

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