

112TH CONGRESS  
1ST SESSION

# H. R. 152

To utilize the National Guard to provide support for the border control activities of the United States Customs and Border Protection of the Department of Homeland Security, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. POE of Texas (for himself, Mr. BRADY of Texas, Mr. GOHMERT, Mr. ROYCE, Mr. ROE of Tennessee, Mr. HALL, Mr. CAMPBELL, Mr. BURTON of Indiana, Mr. STUTZMAN, Mr. STEARNS, and Mr. LATTA) introduced the following bill; which was referred to the Committee on Armed Services

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## A BILL

To utilize the National Guard to provide support for the border control activities of the United States Customs and Border Protection of the Department of Homeland Security, 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 Border  
5 Enforcement Act”.

1 **SEC. 2. USE OF NATIONAL GUARD TO SUPPORT DEPART-**  
2 **MENT OF HOMELAND SECURITY BORDER**  
3 **CONTROL ACTIVITIES.**

4 (a) EXPANDED DEPLOYMENT OF NATIONAL GUARD;  
5 DURATION.—

6 (1) DEPLOYMENT; DURATION.—In addition to  
7 the number of members of the National Guard de-  
8 ployed along the international border between the  
9 United States and Mexico as of the date of the en-  
10 actment of this Act, the Secretary of Defense shall  
11 provide for the deployment of not less than an addi-  
12 tional 10,000 members of the National Guard along  
13 the international border between the United States  
14 and Mexico until the date on which the Secretary of  
15 Homeland Security certifies that the Federal Gov-  
16 ernment has achieved operational control of the  
17 international border.

18 (2) ADDITIONAL DEPLOYMENTS.—The Sec-  
19 retary of Defense may exceed the number specified  
20 in paragraph (1) at the request of a Governor of a  
21 State that shares a portion of the international bor-  
22 der between the United States and Mexico if, despite  
23 the deployment of the additional 10,000 members of  
24 the National Guard along the international border,  
25 operational control of the international border has  
26 not been achieved.

1           (3) DEPLOYMENT AUTHORITIES.—Members of  
2 the National Guard required to be deployed pursu-  
3 ant to paragraph (1) may be deployed under section  
4 502(f) of title 32, United States Code, pursuant to  
5 a State border control activities plan approved under  
6 section 112a of such title, as added by subsection  
7 (b), or pursuant to the order of the Secretary of De-  
8 fense under any other provision of law.

9           (4) EXEMPTION FROM END STRENGTHS AND  
10 OTHER LIMITATIONS.—Members of the National  
11 Guard deployed pursuant to paragraph (1) shall not  
12 be included in the calculation to determine compli-  
13 ance with—

14                   (A) limits on end strength; or

15                   (B) limits on the number of National  
16 Guard personal that may be placed on active  
17 duty for operational support.

18           (5) OPERATIONAL CONTROL DEFINED.—In this  
19 subsection, the term “operational control” has the  
20 meaning given that term in section 2(b) of the Se-  
21 cure Fence Act of 2006 (Public Law 109–367; 8  
22 U.S.C. 1701 note).

23           (b) FEDERAL ASSISTANCE FOR STATE BORDER CON-  
24 TROL ACTIVITIES PLANS.—Chapter 1 of title 32, United

1 States Code, is amended by inserting after section 112 the  
2 following:

3 **“§ 112a. Border control activities**

4 “(a) FUNDING ASSISTANCE.—The Secretary of De-  
5 fense shall provide funds to the Governor of a State who  
6 submits to the Secretary a State border control activities  
7 plan satisfying the requirements of subsection (c). Such  
8 funds shall be used for the following:

9 “(1) The pay, allowances, clothing, subsistence,  
10 gratuities, travel, and related expenses, as author-  
11 ized by State law, of personnel of the National  
12 Guard of that State used, while not in Federal serv-  
13 ice, for the purpose of border control activities.

14 “(2) The operation and maintenance of the  
15 equipment and facilities of the National Guard of  
16 that State used for the purpose of border control ac-  
17 tivities.

18 “(3) The procurement of services and equip-  
19 ment, and the leasing of equipment, for the National  
20 Guard of that State used for the purpose of border  
21 control activities. However, the use of such funds for  
22 the procurement of equipment may not exceed  
23 \$5,000 per item, unless approval for procurement of  
24 equipment in excess of that amount is granted in ad-  
25 vance by the Secretary of Defense.

1           “(b) USE OF PERSONNEL PERFORMING FULL-TIME  
2 NATIONAL GUARD DUTY.—(1) Under regulations pre-  
3 scribed by the Secretary of Defense, personnel of the Na-  
4 tional Guard of a State may, in accordance with the State  
5 border control activities plan referred to in subsection (c),  
6 be ordered to perform full-time National Guard duty  
7 under section 502(f) of this title for the purpose of car-  
8 rying out border control activities.

9           “(2)(A) A member of the National Guard serving on  
10 full-time National Guard duty under orders authorized  
11 under paragraph (1) shall participate in the training re-  
12 quired under section 502(a) of this title in addition to the  
13 duty performed for the purpose authorized under that  
14 paragraph. The pay, allowances, and other benefits of the  
15 member while participating in the training shall be the  
16 same as those to which the member is entitled while per-  
17 forming duty for the purpose of carrying out border con-  
18 trol activities. The member is not entitled to additional  
19 pay, allowances, or other benefits for participation in  
20 training required under section 502(a)(1) of this title.

21           “(B) Appropriations available for the Department of  
22 Defense for homeland defense may be used for paying  
23 costs associated with a member’s participation in training  
24 described in subparagraph (A). The appropriation shall be  
25 reimbursed in full, out of appropriations available for pay-

1 ing those costs, for the amounts paid. Appropriations  
2 available for paying those costs shall be available for mak-  
3 ing the reimbursements.

4 “(C) To ensure that the use of units and personnel  
5 of the National Guard of a State pursuant to a State bor-  
6 der control activities plan does not degrade the training  
7 and readiness of such units and personnel, the following  
8 requirements shall apply in determining the border control  
9 activities that units and personnel of the National Guard  
10 of a State may perform:

11 “(i) The performance of the activities may not  
12 adversely affect the quality of that training or other-  
13 wise interfere with the ability of a member or unit  
14 of the National Guard to perform the military func-  
15 tions of the member or unit.

16 “(ii) National Guard personnel will not degrade  
17 their military skills as a result of performing the ac-  
18 tivities.

19 “(iii) The performance of the activities will not  
20 result in a significant increase in the cost of train-  
21 ing.

22 “(iv) In the case of border control activities per-  
23 formed by a unit organized to serve as a unit, the  
24 activities will support valid unit training require-  
25 ments.

1       “(c) PLAN REQUIREMENTS.—A State border control  
2 activities plan shall—

3           “(1) specify how personnel of the National  
4 Guard of that State are to be used in border control  
5 activities in support of the mission of the United  
6 States Customs and Border Protection of the De-  
7 partment of Homeland Security;

8           “(2) certify that those operations are to be con-  
9 ducted at a time when the personnel involved are not  
10 in Federal service;

11          “(3) certify that participation by National  
12 Guard personnel in those operations is service in ad-  
13 dition to training required under section 502 of this  
14 title;

15          “(4) certify that any engineer-type activities (as  
16 defined by the Secretary of Defense) under the plan  
17 will be performed only by units and members of the  
18 National Guard;

19          “(5) include a certification by the Attorney  
20 General of the State (or, in the case of a State with  
21 no position of Attorney General, a civilian official of  
22 the State equivalent to a State attorney general)  
23 that the use of the National Guard of the State for  
24 the activities proposed under the plan is authorized  
25 by, and is consistent with, State law; and

1           “(6) certify that the Governor of the State or  
2           a civilian law enforcement official of the State des-  
3           ignated by the Governor has determined that any ac-  
4           tivities included in the plan that are carried out in  
5           conjunction with Federal law enforcement agencies  
6           serve a State law enforcement purpose.

7           “(d) EXAMINATION OF PLAN.—Before funds are pro-  
8           vided to the Governor of a State under this section and  
9           before members of the National Guard of that State are  
10          ordered to full-time National Guard duty as authorized in  
11          subsection (b), the Secretary of Defense shall, in consulta-  
12          tion with the Secretary of Homeland Security, examine the  
13          adequacy of the plan submitted by the Governor under  
14          subsection (c). The plan as approved by the Secretary of  
15          Defense may provide for the use of personnel and equip-  
16          ment of the National Guard of that State to assist United  
17          States Customs and Border Protection in the transpor-  
18          tation of aliens who have violated a Federal immigration  
19          law.

20          “(e) END STRENGTH LIMITATION.—(1) Except as  
21          provided in paragraphs (2) and (3), at the end of a fiscal  
22          year there may not be more than 10,000 members of the  
23          National Guard—



1           “(A) on full-time National Guard duty under  
2           section 502(f) of this title to perform border control  
3           activities pursuant to an order to duty; or

4           “(B) on duty under State authority to perform  
5           border control activities pursuant to an order to  
6           duty with State pay and allowances being reim-  
7           bursed with funds provided under subsection (a)(1).

8           “(2) The Secretary of Defense may increase the end  
9           strength authorized under paragraph (1) if the Secretary  
10          determines that such an increase is necessary in the na-  
11          tional security interests of the United States.

12          “(3) National Guard personnel deployed pursuant to  
13          paragraph (1) shall not be included in the calculation to  
14          determine compliance with—

15                 “(A) limits on end strength; or

16                 “(B) limits on the number of National Guard  
17          personal that may be placed on active duty for oper-  
18          ational support.

19          “(f) ANNUAL REPORT.—The Secretary of Defense  
20          shall submit to Congress an annual report regarding as-  
21          sistance provided and activities carried out under this sec-  
22          tion during the preceding fiscal year. The report shall in-  
23          clude the following:

1           “(1) The number of members of the National  
2           Guard excluded under subsection (e) from the com-  
3           putation of end strengths.

4           “(2) A description of the border control activi-  
5           ties conducted under State border control activities  
6           plans referred to in subsection (e) with funds pro-  
7           vided under this section.

8           “(3) An accounting of the amount of funds pro-  
9           vided to each State.

10           “(4) A description of the effect on military  
11           training and readiness of using units and personnel  
12           of the National Guard to perform activities under  
13           the State border control activities plans.

14           “(g) STATUTORY CONSTRUCTION.—Nothing in this  
15           section shall be construed as a limitation on the authority  
16           of any unit of the National Guard of a State, when such  
17           unit is not in Federal service, to perform law enforcement  
18           functions authorized to be performed by the National  
19           Guard by the laws of the State concerned.

20           “(h) DEFINITIONS.—In this section:

21           “(1) The term ‘border control activities’, with  
22           respect to the National Guard of a State, means the  
23           use of National Guard personnel in border control  
24           activities authorized by the law of the State and re-  
25           quested by the Governor of the State in support of

1 the mission of the United States Customs and Bor-  
2 der Protection of the Department of Homeland Se-  
3 curity, including activities as follows:

4 “(A) Armed vehicle and foot patrols along  
5 the international border between the United  
6 States and Mexico.

7 “(B) Interdiction of a vehicle, vessel, air-  
8 craft or other similar activity.

9 “(C) Search, seizure, and detention of sus-  
10 pects.

11 “(D) Construction of roads, fences, and ve-  
12 hicle barriers.

13 “(E) Search and rescue operations.

14 “(F) Intelligence gathering, surveillance,  
15 and reconnaissance.

16 “(G) Aviation support.

17 “(2) The term ‘Governor of a State’ means, in  
18 the case of the District of Columbia, the Com-  
19 manding General of the National Guard of the Dis-  
20 trict of Columbia.

21 “(3) The term ‘State’ means each of the several  
22 States, the District of Columbia, the Commonwealth  
23 of Puerto Rico, or a territory or possession of the  
24 United States.”.

1           (c) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 1 of such title is amended by  
3 inserting after the item relating to section 112 the fol-  
4 lowing new item:

“112a. Border control activities.”.

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