

# SENATE BILL 501

E4, P1

9lr1080  
CF 9lr2314

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By: **Senators Madaleno, Harrington, Lenett, Pinsky, Pugh, and Raskin**

Introduced and read first time: February 4, 2009

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – National Guard Deployment – Governor’s Powers**

3 FOR the purpose of requiring the Governor to withhold approval of the transfer of the  
4 National Guard to federal control in the absence of an explicit authorization for  
5 use of military force adopted by the U.S. Congress and in force on the date of the  
6 federal request for transfer or a declaration of war by the U.S. Congress;  
7 authorizing the Governor to request the return of certain units of the National  
8 Guard to the control of the State in certain circumstances; and generally  
9 relating to the deployment of the National Guard.

10 BY repealing and reenacting, with amendments,  
11 Article – Public Safety  
12 Section 13–401(c)  
13 Annotated Code of Maryland  
14 (2003 Volume and 2008 Supplement)

15 Preamble

16 WHEREAS, Under the U.S. Constitution, each state’s National Guard unit is  
17 controlled by the governor, but can be called up for federal duty by the President,  
18 provided that the President is acting pursuant to the Constitution and laws of the  
19 United States; and

20 WHEREAS, The War Powers Act of 1973 (Public Law 93–148) specifically limits  
21 the power of the President of the United States to wage war without the approval of  
22 Congress; and

23 WHEREAS, In October 2002, the U.S. Congress adopted the Authorization for  
24 Use of Military Force Against Iraq (Public Law No. 107–243) (AUMF), a law enacted  
25 in response to a presidential request consistent with the War Powers Act; and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The Iraq AUMF stated in relevant part that the President was  
2 authorized to use the armed forces of the United States in order to (1) defend the  
3 national security of the United States against the continuing threat posed by Iraq and  
4 (2) enforce all relevant United Nations Security Council Resolutions regarding Iraq;  
5 and

6 WHEREAS, U.S. forces, including members of the Maryland National Guard  
7 and guard members from other states, have long since addressed the purposes recited  
8 under the AUMF, to wit, Iraq does not pose a continuing threat to the national  
9 security of the United States, and there are no relevant United Nations Security  
10 Council Resolutions regarding Iraq yet to be enforced; and

11 WHEREAS, The Iraq AUMF has therefore expired by its own terms, and other  
12 than the AUMF, there is no authority under the Constitution or the laws of the United  
13 States for the continued presence of Maryland National Guard members in Iraq; and

14 WHEREAS, The maintenance of Maryland National Guard members in Iraq  
15 beyond the time and scope set for in the AUMF has resulted in significant harm to  
16 Guard members and their families, including death and injury, loss of time together,  
17 and financial hardships; now, therefore,

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Public Safety**

21 13–401.

22 (c) (1) If the National Guard or any of its units are ordered into active  
23 military service of the United States by the President of the United States, the  
24 Governor may increase the military force and organize those units as the emergency  
25 requires.

26 (2) **THE GOVERNOR SHALL WITHHOLD APPROVAL OF THE**  
27 **TRANSFER OF THE NATIONAL GUARD TO FEDERAL CONTROL IN THE ABSENCE**  
28 **OF:**

29 (I) **AN EXPLICIT AUTHORIZATION FOR USE OF MILITARY**  
30 **FORCE ADOPTED BY THE U.S. CONGRESS AND IN FORCE ON THE DATE OF THE**  
31 **FEDERAL REQUEST FOR TRANSFER; OR**

32 (II) **A DECLARATION OF WAR BY THE U.S. CONGRESS.**

33 (3) **IF AN AUTHORIZATION FOR USE OF MILITARY FORCE HAS BY**  
34 **ITS TERMS EXPIRED OR IS NO LONGER VALID AUTHORITY FOR FEDERAL**  
35 **CONTROL OVER UNITS OF THE NATIONAL GUARD, AND THERE IS OTHERWISE**

1 NO ACTION UNDERWAY FOR THE PROMPT RETURN OF THE UNITS TO STATE  
2 CONTROL, THE GOVERNOR SHALL REQUEST THE RETURN OF THE UNITS TO THE  
3 CONTROL OF THE STATE.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2009.