

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 220 (Delegate Grammer)
Health and Government Operations

Public Safety - Militia - Active Duty Combat (Maryland Defend Our Guard Act)

This bill prohibits the Governor from ordering the militia or any member of the militia into “active duty combat,” as defined by the bill, unless the U.S. Congress has passed an official declaration of war or has taken an official action as required under the U.S. Constitution to explicitly call forth the State militia or any member of the State militia to execute the laws of the United States, repel an invasion, or suppress an insurrection. The bill may not be construed to limit or prohibit the Governor from deploying the militia or a member of the militia under Title 32 of the U.S. Code (Defense Support of Civil Authorities (DSCA)) within the United States and U.S. territories.

Fiscal Summary

State Effect: None. Any change in State activities does not materially affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Active duty combat” means performing the following services in the active federal military service of the United States: (1) participation in armed conflict; (2) performance of a hazardous service relating to an armed conflict in a foreign state; or (3) performance of a duty through an instrumentality of war. “Official declaration of war” means an official declaration of war made by the U.S. Congress under Article I, § 8, Clause 11 of the U.S. Constitution.

Current Law:

Militia – Composition and State Active Duty

The Public Safety Article lists two classes of State militia: the organized militia and the unorganized militia. The organized militia consists of the National Guard, Inactive National Guard, and the Maryland Defense Force (MDDF). Generally, the National Guard is part of the reserve components of the U.S. Armed Forces under dual control of the State and the federal government. MDDF is an all-volunteer force designed to assist the National Guard during stateside emergencies. The Governor is the Commander-in-Chief of MDDF, and MDDF generally cannot be deployed outside the borders of Maryland.

The Governor may order the militia into State active duty (1) in times or on reasonable apprehension of imminent public crisis, disaster, rioting, catastrophe, insurrection, invasion, tumult, or breach of peace; (2) when martial law is declared; (3) to enforce the laws; or (4) to carry on any function of the militia of the State.

To enforce the laws, a member of the militia in State active duty has all the authority of a peace or law enforcement officer. The authority of the member extends throughout the State during the State active duty. Whenever the militia is in State active duty, the ranking officer of the militia ordered into State active duty or that officer's subordinates on State active duty must (1) cooperate with local law enforcement authorities or (2) if the exigencies of the case require, and subject only to order from the Governor, direct and control local law enforcement authorities and the Department of State Police and assume all the powers vested in these subordinated law enforcement authorities.

Activation of the National Guard

Title 32 of the U.S. Code establishes the conditions when the National Guard may be mobilized with the consent of the Governor, on the condition of approval of the President or the Secretary of Defense. Title 32 mobilization includes State active duty and full-time National Guard duty within the United States and U.S. territories, which generally relates to specified events, such as natural disasters, periods of civil unrest, or terrorist attacks. It does not include assignment to active-duty combat outside of the country.

However, Title 10 of the U.S. Code specifies conditions when the National Guard may be federally mobilized to augment components of the U.S. Armed Forces without the Governor's approval. Generally, after the President declares a national emergency, the Secretary of the specified military branch may order any unit and any member of the National Guard into active duty for no more than 24 consecutive months. In addition, when the President determines it is necessary to augment the active forces or operational mission,

the Secretary of the specified military branch is authorized to order any unit and member of the National Guard to active duty for no more than 365 consecutive days.

Defense Support of Civil Authorities

DSCA is support provided by the U.S. military, specified U.S. Department of Defense (DOD) personnel and assets, and National Guard forces (when the Secretary of Defense, in coordination with the governors of the affected states, requests to use the support as specified under Title 32 of the U.S. Code) to domestic civil authorities in response to natural disasters, as law enforcement support, or other domestic activities. Generally, state and local governments receive federal assistance once state and local resources are no longer available. In addition, military commanders and specified DOD civilians are authorized to immediately respond to requests for assistance from local civil authorities in order to save lives, prevent human suffering, or mitigate property damage within the United States and U.S. territories.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 273 of 2022.

Designated Cross File: None.

Information Source(s): Governor's Office; Military Department; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2023
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