

2010 -- H 7641

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

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A N A C T

RELATING TO THE WITHDRAWAL OF THE RHODE ISLAND NATIONAL GUARD  
MILITARY FORCES FROM IRAQ AND THE FEDERAL DEPLOYMENT OF THE  
NATIONAL GUARD

Introduced By: Representatives Segal, and Driver

Date Introduced: February 25, 2010

Referred To: House Veterans` Affairs

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings. The general assembly finds that:

2 (a) Under Article I, section 8, clause 15 of the United States Constitution, Congress may  
3 call forth the militia to execute the laws of the union, suppress insurrections and repel invasions.

4 (b) Since 1933, federal law has provided that persons enlisting in a state national guard  
5 unit simultaneously enlist in the national guard of the United States, a part of the U.S. Army. The  
6 enlistees retain their status as state guard members unless and until ordered to active federal duty  
7 and then revert to state status upon being relieved from federal service.

8 (c) In 1986, Congress passed and the President signed the "Montgomery Amendment"  
9 which provides that a governor cannot withhold consent with regard to active duty outside the  
10 United States because of any objection to the location, purpose, type, or schedule of such duty.

11 (d) Under the U.S. Constitution, each state's national guard unit is controlled by the  
12 governor in time of peace, but can be called up for federal duty by the President, provided that the  
13 President is acting pursuant to the Constitution and laws of the United States.

14 (e) The War Powers Act of 1973 (Public Law 93-148) specifically limits the power of the  
15 President of the United States to wage war without the approval of Congress.

16 (f) In October 2002, the U.S. Congress authorized military force under the Authorization  
17 for the Use of Military Force Against Iraq, Public Law No. 107-243, (AUMF), a law enacted in  
18 response to a presidential request under the War Powers Act. The AUMF stated in part that:

1 “The President is authorized to use the Armed Forces of the United States as he  
2 determines to be necessary and appropriate in order to (1) defend the national security of the  
3 United States against the continuing threat posed by Iraq; and (2) enforce all relevant United  
4 Nations Security Council Resolutions regarding Iraq.”

5 (g) The AUMF contained neither a termination date nor a process or procedure to  
6 determine when the authorization should terminate.

7 (h) U.S. forces, including members of the Rhode Island National Guard and guard  
8 members from other states, have long since addressed the purposes recited under the AUMF, and  
9 Iraq does not pose a continuing threat to the national security of the United States, nor is there an  
10 extant United Nations Security Council Resolution to be implemented.

11 (i) The President may not maintain U.S. forces, and in particular members of the Rhode  
12 Island National Guard, in Iraq other than for the purposes set forth by Congress in the AUMF.  
13 Without a specific date for withdrawal of U.S. Forces from Iraq in the AUMF or a method of  
14 formula for determining the time for withdrawal, and in the absence of congressional legislation  
15 curing these omissions, the President is required to order the withdrawal of troops within a  
16 reasonable time and in a reasonable manner. The President has taken no such action.

17 (j) Other than the AUMF, there is no authority under the Constitution or the laws of the  
18 United States for the continued presence of Rhode Island National Guard members in Iraq.

19 (k) The maintenance of Rhode Island National Guard members in Iraq beyond the time  
20 and scope set forth in the AUMF has resulted in significant harm to Guard members and their  
21 families, including death and injury, loss of time together, and financial hardship.

22 (l) The general assembly finds that Congress should revisit the 1986 Montgomery  
23 Amendment and adopt legislation that restores the powers of the governors of the several states to  
24 withhold consent to federalization of their National Guards, except where a declaration of war has  
25 been adopted or where the United States faces attack or invasion, and the President has invoked  
26 powers authorized by an act of Congress to address those circumstances.

27 SECTION 2. Expiration of the 2002 authorization for use of military force and  
28 withdrawal of Rhode Island National Guard members from Iraq.

29 (a) The Authorization for the use of military force of October 16, 2002 having expired,  
30 the general assembly declares that all members of the Rhode Island National Guard should be  
31 promptly and expeditiously withdrawn from Iraq, subject only to conditions of time and manner  
32 specifically required to assure their safety and well-being during removal operations.

33 (b) The general assembly calls on the Governor of Rhode Island to take prompt steps as  
34 the Commander-in-Chief of the Rhode Island National Guard to effectuate these purposes.

1           SECTION 3. Limitation of Rhode Island National Guard service in wars not statutorily or  
2 constitutionally authorized.

3           The general assembly reaffirms that the Rhode Island National Guard shall be limited to  
4 service on behalf of the state of Rhode Island, unless called into federal service pursuant to a  
5 declaration of war or a duly enacted federal statute authorizing the use of military force.

6           SECTION 4. Authority for the Rhode Island attorney general to defend decisions to  
7 deploy or not deploy the Rhode Island National Guard.

8           The attorney general is authorized to appear in any state or federal court with jurisdiction  
9 over the deployment of the Rhode Island National Guard to defend any decision of the governor  
10 and adjutant general with respect to their decision to deploy or not deploy the guard.

11          SECTION 5. Preservation of command structure during service.

12          No member of the Rhode Island National Guard shall decline, while serving in the U.S.  
13 armed forces, to follow military orders.

14          SECTION 6. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO THE WITHDRAWAL OF THE RHODE ISLAND NATIONAL GUARD  
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NATIONAL GUARD

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- 1           This act would provide that the general assembly call on the governor to withdraw all
- 2 members of the Rhode Island National Guard from Iraq.
- 3           This act would take effect upon passage.

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