

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5562

To authorize 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

MARCH 10, 2008

Mrs. WILSON of New Mexico introduced the following bill; which was referred to the Committee on Armed Services

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## A BILL

To authorize 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. NATIONAL GUARD SUPPORT FOR BORDER CON-**  
4 **TROL ACTIVITIES.**

5       (a) OPERATION JUMP START.—

6           (1) IN GENERAL.—Not fewer than 6,000 Na-  
7 tional Guard personnel shall continue to be deployed  
8 along the international border between the United

1 States and Mexico under Operation Jump Start  
2 until the date on which the Federal Government has  
3 achieved operational control of such border (as de-  
4 fined in section 2(b) of the Secure Fence Act of  
5 2006 (Public Law 109–367)).

6 (2) EXEMPTION.—National Guard personnel  
7 deployed pursuant to paragraph (1) shall not be in-  
8 cluded in the calculation to determine compliance  
9 with—

10 (A) limits on end strength; or

11 (B) limits on the number of National  
12 Guard personal that may be placed on active  
13 duty for operational support.

14 (b) SUPPORT AUTHORIZED.—Chapter 1 of title 32,  
15 United States Code, is amended by inserting after section  
16 112 the following:

17 **“§ 112a. Border control activities**

18 “(a) FUNDING ASSISTANCE.—The Secretary of De-  
19 fense may provide funds to the Governor of a State who  
20 submits to the Secretary a State border control activities  
21 plan satisfying the requirements of subsection (c). Such  
22 funds shall be used for the following:

23 “(1) The pay, allowances, clothing, subsistence,  
24 gratuities, travel, and related expenses, as author-  
25 ized by State law, of personnel of the National

1 Guard of that State used, while not in Federal serv-  
2 ice, for the purpose of border control activities.

3 “(2) The operation and maintenance of the  
4 equipment and facilities of the National Guard of  
5 that State used for the purpose of border control ac-  
6 tivities.

7 “(3) The procurement of services and equip-  
8 ment, and the leasing of equipment, for the National  
9 Guard of that State used for the purpose of border  
10 control activities. However, the use of such funds for  
11 the procurement of equipment may not exceed  
12 \$5,000 per item, unless approval for procurement of  
13 equipment in excess of that amount is granted in ad-  
14 vance by the Secretary of Defense.

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

23 “(2)(A) A member of the National Guard serving on  
24 full-time National Guard duty under orders authorized  
25 under paragraph (1) shall participate in the training re-

1 quired under section 502(a) of this title in addition to the  
2 duty performed for the purpose authorized under that  
3 paragraph. The pay, allowances, and other benefits of the  
4 member while participating in the training shall be the  
5 same as those to which the member is entitled while per-  
6 forming duty for the purpose of carrying out border con-  
7 trol activities. The member is not entitled to additional  
8 pay, allowances, or other benefits for participation in  
9 training required under section 502(a)(1) of this title.

10       “(B) Appropriations available for the Department of  
11 Defense for homeland defense may be used for paying  
12 costs associated with a member’s participation in training  
13 described in subparagraph (A). The appropriation shall be  
14 reimbursed in full, out of appropriations available for pay-  
15 ing those costs, for the amounts paid. Appropriations  
16 available for paying those costs shall be available for mak-  
17 ing the reimbursements.

18       “(C) To ensure that the use of units and personnel  
19 of the National Guard of a State pursuant to a State bor-  
20 der control activities plan does not degrade the training  
21 and readiness of such units and personnel, the following  
22 requirements shall apply in determining the border control  
23 activities that units and personnel of the National Guard  
24 of a State may perform:

1           “(i) The performance of the activities may not  
2           adversely affect the quality of that training or other-  
3           wise interfere with the ability of a member or unit  
4           of the National Guard to perform the military func-  
5           tions of the member or unit.

6           “(ii) National Guard personnel will not degrade  
7           their military skills as a result of performing the ac-  
8           tivities.

9           “(iii) The performance of the activities will not  
10          result in a significant increase in the cost of train-  
11          ing.

12          “(iv) In the case of border control activities per-  
13          formed by a unit organized to serve as a unit, the  
14          activities will support valid unit training require-  
15          ments.

16          “(c) PLAN REQUIREMENTS.—A State border control  
17          activities plan shall—

18               “(1) specify how personnel of the National  
19               Guard of that State are to be used in border control  
20               activities in support of the mission of the United  
21               States Customs and Border Protection of the De-  
22               partment of Homeland Security;

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

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

5           “(4) certify that any engineer-type activities (as  
6           defined by the Secretary of Defense) under the plan  
7           will be performed only by units and members of the  
8           National Guard;

9           “(5) include a certification by the Attorney  
10          General of the State (or, in the case of a State with  
11          no position of Attorney General, a civilian official of  
12          the State equivalent to a State attorney general)  
13          that the use of the National Guard of the State for  
14          the activities proposed under the plan is authorized  
15          by, and is consistent with, State law; and

16          “(6) certify that the Governor of the State or  
17          a civilian law enforcement official of the State des-  
18          ignated by the Governor has determined that any ac-  
19          tivities included in the plan that are carried out in  
20          conjunction with Federal law enforcement agencies  
21          serve a State law enforcement purpose.

22          “(d) EXAMINATION OF PLAN.—Before funds are pro-  
23          vided to the Governor of a State under this section and  
24          before members of the National Guard of that State are  
25          ordered to full-time National Guard duty as authorized in

1 subsection (b), the Secretary of Defense shall, in consulta-  
2 tion with the Secretary of Homeland Security, examine the  
3 adequacy of the plan submitted by the Governor under  
4 subsection (c). The plan as approved by the Secretary of  
5 Defense may provide for the use of personnel and equip-  
6 ment of the National Guard of that State to assist United  
7 States Customs and Border Protection in the transpor-  
8 tation of aliens who have violated a Federal immigration  
9 law.

10 “(e) END STRENGTH LIMITATION.—(1) Except as  
11 provided in paragraphs (2) and (3), at the end of a fiscal  
12 year there may not be more than 6,000 members of the  
13 National Guard—

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

17 “(B) on duty under State authority to perform  
18 border control activities pursuant to an order to  
19 duty with State pay and allowances being reim-  
20 bursed with funds provided under subsection (a)(1).

21 “(2) The Secretary of Defense may increase the end  
22 strength authorized under paragraph (1) by not more than  
23 20 percent for any fiscal year if the Secretary determines  
24 that such an increase is necessary in the national security  
25 interests of the United States.

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

4               “(A) limits on end strength; or

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

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

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

16               “(2) A description of the border control activi-  
17 ties conducted under State border control activities  
18 plans referred to in subsection (e) with funds pro-  
19 vided under this section.

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

22               “(4) A description of the effect on military  
23 training and readiness of using units and personnel  
24 of the National Guard to perform activities under  
25 the State border control activities plans.

1       “(g) STATUTORY CONSTRUCTION.—Nothing in this  
2 section shall be construed as a limitation on the authority  
3 of any unit of the National Guard of a State, when such  
4 unit is not in Federal service, to perform law enforcement  
5 functions authorized to be performed by the National  
6 Guard by the laws of the State concerned.

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

8               “(1) The term ‘border control activities’, with  
9 respect to the National Guard of a State, means the  
10 use of National Guard personnel in border control  
11 activities authorized by the law of the State and re-  
12 quested by the Governor of the State in support of  
13 the mission of the United States Customs and Bor-  
14 der Protection of the Department of Homeland Se-  
15 curity, including activities as follows:

16                       “(A) Construction of roads, fences, and ve-  
17 hicle barriers.

18                       “(B) Search and rescue operations.

19                       “(C) Intelligence gathering, surveillance,  
20 and reconnaissance.

21                       “(D) Communications and information  
22 technology support.

23                       “(E) Installation and operation of cam-  
24 eras.

1           “(F) Repair and maintenance of infra-  
2 structure.

3           “(G) Administrative support.

4           “(H) Aviation support, including mainte-  
5 nance.

6           “(I) Logistics support.

7           “(2) The term ‘Governor of a State’ means, in  
8 the case of the District of Columbia, the Com-  
9 manding General of the National Guard of the Dis-  
10 trict of Columbia.

11           “(3) The term ‘State’ means each of the several  
12 States, the District of Columbia, the Commonwealth  
13 of Puerto Rico, or a territory or possession of the  
14 United States.”.

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

“112a. Border control activities.”.

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