

# Calendar No. 601

110TH CONGRESS  
2D SESSION

# S. 2716

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 SENATE OF THE UNITED STATES

MARCH 5, 2008

Mr. DOMENICI introduced the following bill; which was read the first time

MARCH 6, 2008

Read the second time and placed on the calendar

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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.—

1           (1) IN GENERAL.—Not fewer than 6,000 Na-  
2           tional Guard personnel shall continue to be deployed  
3           along the international border between the United  
4           States and Mexico under Operation Jump Start  
5           until the date on which the Federal Government has  
6           achieved operational control of such border (as de-  
7           fined in section 2(b) of the Secure Fence Act of  
8           2006 (Public Law 109–367)).

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

13                   (A) limits on end strength; or

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

17          (b) SUPPORT AUTHORIZED.—Chapter 1 of title 32,  
18          United States Code, is amended by inserting after section  
19          112 the following:

20          “**§ 112a. Border control activities**

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

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

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

10           “(3) The procurement of services and equip-  
11           ment, and the leasing of equipment, for the National  
12           Guard of that State used for the purpose of border  
13           control activities. However, the use of such funds for  
14           the procurement of equipment may not exceed  
15           \$5,000 per item, unless approval for procurement of  
16           equipment in excess of that amount is granted in ad-  
17           vance by the Secretary of Defense.

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

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

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

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

1 activities that units and personnel of the National Guard  
2 of a State may perform:

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

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

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

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

18           “(c) PLAN REQUIREMENTS.—A State border control  
19 activities plan shall—

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

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

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

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

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

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

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

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

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

21               “(B) on duty under State authority to perform  
22 border control activities pursuant to an order to  
23 duty with State pay and allowances being reim-  
24 bursed with funds provided under subsection (a)(1).

1       “(2) The Secretary of Defense may increase the end  
2 strength authorized under paragraph (1) by not more than  
3 20 percent for any fiscal year if the Secretary determines  
4 that such an increase is necessary in the national security  
5 interests of the United States.

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

9               “(A) limits on end strength; or

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

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

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

21              “(2) A description of the border control activi-  
22 ties conducted under State border control activities  
23 plans referred to in subsection (c) with funds pro-  
24 vided under this section.

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

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

7           “(g) STATUTORY CONSTRUCTION.—Nothing in this  
8           section shall be construed as a limitation on the authority  
9           of any unit of the National Guard of a State, when such  
10          unit is not in Federal service, to perform law enforcement  
11          functions authorized to be performed by the National  
12          Guard by the laws of the State concerned.

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

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

22                         “(A) Construction of roads, fences, and ve-  
23                         hicle barriers.

24                         “(B) Search and rescue operations.

1           “(C) Intelligence gathering, surveillance,  
2           and reconnaissance.

3           “(D) Communications and information  
4           technology support.

5           “(E) Installation and operation of cam-  
6           eras.

7           “(F) Repair and maintenance of infra-  
8           structure.

9           “(G) Administrative support.

10          “(H) Aviation support, including mainte-  
11          nance.

12          “(I) Logistics support.

13          “(2) The term ‘Governor of a State’ means, in  
14          the case of the District of Columbia, the Com-  
15          manding General of the National Guard of the Dis-  
16          trict of Columbia.

17          “(3) The term ‘State’ means each of the several  
18          States, the District of Columbia, the Commonwealth  
19          of Puerto Rico, or a territory or possession of the  
20          United States.”.

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

“112a. Border control activities.”.



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