

HB 433 - AS INTRODUCED

2015 SESSION

15-0208
09/10

HOUSE BILL **433**

AN ACT relative to the state guard.

SPONSORS: Rep. Itse, Rock 10; Rep. Hoell, Merr 23; Rep. Baldasaro, Rock 5; Rep. Hagan,
Rock 4

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This bill makes changes to the authority, composition, administration, and privileges and immunities of the state guard.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to the state guard.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Authority. Amend RSA 111:1 to read as follows:

2 111:1 Authority.

3 I. ~~[Whenever any part of the New Hampshire national guard is in the active service of the~~
4 ~~United States,]~~ The governor is hereby authorized to organize and maintain within this state ~~[during~~
5 ~~such period]~~, under such regulations as the Department of Defense of the United States may
6 prescribe for discipline in training, and otherwise in general conformity with existing law,
7 regulations, rules and practices pertaining to the national guard, ~~[such]~~ military forces ~~[as he may~~
8 ~~deem necessary to defend this state from invasion, rebellion, disaster, insurrection, riot, breach of~~
9 ~~the peace or imminent danger thereof or to maintain the organized militia]~~ ***to serve, protect, and***
10 ***aid this state and its citizens in times of need.***

11 II. The governor may authorize the adjutant general's department to maintain a cadre of
12 officers and enlisted personnel on a standby basis to prepare and maintain a roster of available
13 personnel and to plan for an active state guard ~~[in the event of the mobilization of all or a part of the~~
14 ~~New Hampshire national guard. The provisions of RSA 541-A shall not apply to any regulations or~~
15 ~~proclamations issued pursuant to RSA 111].~~ ***The state guard shall augment and support the***
16 ***national guard, police forces, emergency services, and local communities in the state when***
17 ***additional troops are needed and/or requested either in the course of normal duties and/or***
18 ***times of emergency and disaster.***

19 2 Composition. Amend RSA 111:2 to read as follows:

20 111:2 Composition.

21 I. Such military forces shall be composed of commissioned officers and such able-bodied
22 citizens of the state as shall volunteer for service therein, ~~[supplemented, if necessary, by the~~
23 ~~unorganized militia enrolled by draft and subject to military duty as provided by RSA 110-B]~~ and, in
24 addition to active units, may include inactive and reserve components ***as defined in this section.***
25 No person shall be appointed or enlisted in the state guard who is a member of any other military
26 force of the United States or the state of New Hampshire, or who has any service obligation to any of
27 the armed forces of the United States, except that a retired military member may be appointed or
28 enlisted in the state guard, if otherwise qualified.

29 II. ***The active state guard shall be comprised of those active reserve state guard***
30 ***members called into actual service by the governor of the state or who volunteer, without***
31 ***pay, for service during specific times when requested by the governor or his or her***

1 *representative.*

2 *III. The active reserve state guard shall be comprised of those citizens of the state*
3 *who volunteer for service in the active reserve state guard. The active reserve state guard*
4 *shall consist of persons who volunteer for a 2-year enlistment and who:*

5 *(a) Are or have declared their intentions to become, citizens of the United States,*
6 *and who are not serving in any component of the armed forces of the United States.*

7 *(b) Commit to attend drills, as prescribed by regulation.*

8 *(c) Agree to obtain/purchase a uniform, if no surplus funds from the state are*
9 *available.*

10 *(d) Agree to provide medical records of any and all pre-existing conditions or*
11 *limitations that may restrict the volunteer's duty status.*

12 *IV.(a) The inactive reserve state guard shall be comprised of persons 18 years of age*
13 *or older, who volunteer for service, but are unable to comply with subparagraph III(b).*
14 *Inactive reserve state guard members may participate in any training provided for the*
15 *active reserve state guard. Inactive reserve state guard members may hold commissions up*
16 *to the rank of captain without specific assignment if they held equivalent or higher rank in*
17 *the armed forces of the United States of America or the New Hampshire national guard, or*
18 *if their training or education qualifies them for such rank, provided that their time in*
19 *grade shall always be inferior to those of equal rank in the active reserve state guard.*
20 *Members of the inactive reserve state guard may volunteer for service in an actual*
21 *emergency for such period or periods of time as their circumstances will allow.*

22 3 New Section; Ordering State Guard Into Active State Service. Amend RSA 111 by inserting
23 after section 2 the following new section:

24 111:2-a Ordering State Guard Into Active State Service. The governor shall have power, in case
25 of invasion, disaster, insurrection, riot, breach of the peace, resistance to process of this state, or
26 imminent danger thereof, for the safety of the inhabitants of the state, administration of the state
27 guard pursuant to RSA 111:8, or upon the request of any town or city pursuant to RSA 31:56, to call
28 for volunteers of the active service of the state for such period, to such extent, and in such manner as
29 the governor may deem necessary, all or any part of the state guard.

30 4 Pay and Allowances. RSA 111:7 is repealed and reenacted to read as follows:

31 111:7 Pay and Allowances. RSA 110-B:37 and any other provisions of RSA 110-B which relate to
32 pay shall not apply to the state guard. Members of the state guard volunteering for service shall
33 receive no pay or other form of compensation from the state. Members of the state guard ordered
34 into service shall receive no more than the lesser of \$10 per hour or \$200 per day from the state.

35 5 New Section; Workers' Compensation. Amend RSA 111 by inserting after section 7 the
36 following new section:

37 111:7-a Workers' Compensation. Members of the state guard serving in a voluntary capacity

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1 shall not be covered by workers' compensation insurance.

2 6 Equipment. RSA 111:8 is repealed and reenacted to read as follows:

3 111:8 Equipment. The state shall not be required to supply equipment or uniforms to the state
4 guard. The state may supply equipment or uniforms to the state guard which is considered surplus
5 or obsolete by the national guard or which is donated by a service organization. The state guard may
6 apply for grants and donations to pay for equipment and supplies. The state guard may also apply to
7 the armed forces of the United States of America and other departments of the state of New
8 Hampshire for surplus equipment.

9 7 New Section; Administration. Amend RSA 111 by inserting after section 8 the following new
10 section:

11 111:8-a Administration. The state guard shall have sole authority and responsibility to
12 administer, prepare, and otherwise maintain all records of personnel and materiel through an
13 administrative staff who are volunteers and meet required national guard standards. All state
14 guard administrative positions shall be unpaid.

15 8 Relief, Privileges, and Immunities. RSA 111:21 is repealed and reenacted to read as follows:

16 111:21 Relief, Privileges and Immunities.

17 I. No officer, warrant officer, or enlisted member of the state guard shall be personally liable,
18 either civilly or criminally, for any damage to property or injury to any person, including death
19 resulting therefrom, caused by the officer or enlisted member or by his or her order, while performing
20 a military duty lawfully ordered under the provisions of this chapter, unless the act or order causing
21 such damage or injury was manifestly beyond the scope of the authority of such officer, warrant
22 officer, or enlisted member. The state or its political subdivisions shall assume liability for the
23 actions of members of the state guard acting under orders while serving on behalf of the state or
24 political subdivision.

25 II. Members of the state guard shall, except for treason, felony or breach of the peace, be
26 privileged from arrest and imprisonment while under orders in the active service of the state from
27 the date of the issuing of such orders to the time when such service shall cease, or while going to,
28 remaining at or returning from, any place at which the individual may be required to attend any
29 military duty.

30 III. The reports and communications of all officers, warrant officers, and members of the
31 national guard in the line of their military duty addressed to their superiors shall be privileged
32 communications and shall not be competent evidence against the writer in any civil or criminal
33 action in the courts of the state.

34 IV. No persons belonging to the state guard shall be arrested or detained on any civil process
35 while going to, remaining at, or returning from any place at which they may be required to attend for
36 any military duty.

37 V. Notwithstanding any other provision of this section to the contrary, any police officer may

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1 arrest or be requested by the adjutant general to arrest any member of the state guard who is absent
2 without leave from any training assembly, drill, period of annual training or any other duty time and
3 shall keep said member in custody for not more than 24 hours until turned over to military
4 authority.

5 9 Acceptance of Gifts Prohibited. Amend RSA 111:23 to read as follows:

6 111:23 Acceptance of Gifts Prohibited. The acceptance of gifts, donations, gratuities or anything
7 of value by ~~[the state guard or by]~~ any ~~[member]~~ **individual** of ~~[such forces]~~ **the state guard** from
8 any individual, firm, association, or corporation, by reason of such membership is prohibited.
9 Violation of this section may be cause for dishonorable discharge from further service as a member of
10 the state guard.

11 10 Use of Militia. Amend RSA 31:56 to read as follows:

12 31:56 Use of ~~[Militia]~~ **State Guard**. The mayor of any city and the selectmen of any town are
13 authorized, at the expense of the city or town, to call ~~[out sufficient military force to suppress or~~
14 ~~prevent a mob riot]~~ **the county or area commander for volunteers from members of the state**
15 **guard by contacting the commanding officer of the county or local area to assist civilian**
16 **emergency personnel in addressing any natural or man-made disaster** within its limits. **The**
17 **senior officer volunteering shall report to the designated civilian officer.**

18 11 Arrests in Criminal Cases; Definitions. Amend RSA 594:1, III to read as follows:

19 III. "Officer" or "peace officer" is any sheriff or deputy sheriff, mayor or city marshal,
20 constable, police officer or watchman, member of the national guard acting under orders while in
21 active state service ordered by the governor under RSA 110-B:6, **member of the state guard acting**
22 **under orders while in active service ordered by the governor under RSA 110-B:6 or RSA**
23 **111:2-a**, or other person authorized to make arrests in a criminal case.

24 12 Effective Date. This act shall take effect 60 days after its passage.