



Vermont National Guard 101: Background on Vermont State Laws

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Outline of Presentation

- ▶ Brief History and Overview of the National Guard
- ▶ Overview of the Vermont Statutes Related to the National Guard
- ▶ State Duty vs. Federal Duty
- ▶ The Adjutant General
- ▶ The Election of the Adjutant General
- ▶ Previously Proposed Legislation to Amend the Adjutant General Selection Process

A Brief History: Origins to 1990

- ▶ The origins of the National Guard lie in state militias dating back to the first colonies
 - ▶ Served states during emergencies
 - ▶ Called into federal service during conflicts such as the War of 1812, the Mexican-American War, the Civil War, and the Spanish-American War.
- ▶ Congress established the Army National Guard in the National Defense Act of 1916
- ▶ The Air National Guard was established by the National Security Act of 1947, which created the Air Force as a separate military service
- ▶ During the early Cold War, the National Guard served in the Korean War and the Vietnam War
- ▶ Following the Vietnam War, the National Guard was transformed into a combat-ready force designed for rapid deployment to “hot spots” around the world

A Brief History: 1990 to Present

- ▶ In 1989, the East German government collapsed and the Berlin Wall fell
- ▶ In combination with the transition to new governments in Romania and Czechoslovakia that year, these events signaled the end of the Cold War
- ▶ Following the invasion of Kuwait in August 1990, more than 62,000 National Guard personnel from around the U.S. were called up to active duty to perform combat, support, and other missions
- ▶ On September 11, 2001, Air National Guard fighters, including F-16's from Vermont, were the first airborne response to the attack on the World Trade Center
- ▶ Since September 11, Vermont Guard members have performed missions in support of U.S. operations in Afghanistan and Iraq
- ▶ In addition, the Vermont Guard has responded to domestic emergencies, such as Hurricane Irene, and carried out a variety of other overseas missions

The Role of the Modern National Guard

- ▶ During peacetime, the Vermont National Guard is under the direction and control of the Governor
- ▶ Can be called up for State active duty by the Governor for a domestic emergency or need
 - ▶ Provides trained units to protect life and property during an event like Hurricane Irene
- ▶ During a National Emergency, the President can mobilize the Guard and place them on federal duty status
- ▶ Even when not federalized, the Vermont National Guard must maintain properly trained and equipped units, available for prompt mobilization for war, national emergency, or as otherwise needed

Reserve Components of the U.S. Military

- ▶ From Smallest to Largest:
 - ▶ Coast Guard Reserve
 - ▶ Marine Corps Reserve
 - ▶ Navy Reserve
 - ▶ Air Force Reserve
 - ▶ Air National Guard
 - ▶ Army Reserve
 - ▶ Army National Guard
- ▶ The Air National Guard and Army National Guard are hybrid state-federal entities
- ▶ All other reserve components are federal entities

Federal Laws Related to the National Guard

- ▶ State militias, which became today's National Guard, are authorized pursuant to the "Militia Clause" of the U.S. Constitution (Art. I, Sec. 8, cl. 16):
 - ▶ "The Congress shall have Power . . . To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;"
- ▶ The National Guard is the militia of the United States (10 U.S.C. § 246)
- ▶ Title 32 of the U.S. Code provides in detail for the organization; personnel; training; service, supply, and procurement; and homeland defense activities of the National Guard

Selected Vermont Statutes Related to the National Guard

- ▶ Chapter II, § 59 of the Vermont Constitution Provides:
 - ▶ “The inhabitants of this State shall be trained and armed for its defense, under such regulations, restrictions, and exceptions, as Congress, agreeably to the Constitution of the United States, and the Legislature of this State, shall direct.”
- ▶ Pursuant to 20 V.S.A. § 361(a), “The Military Department . . . shall be administered by the Adjutant and Inspector General and shall include the National Guard and all military components of the State.”
- ▶ Pursuant to 20 V.S.A. § 362, “Matters relating to the organization, discipline, training, and government of the National Guard not otherwise provided for in [20 V.S.A. ch. 21], nor in the general rules, shall be decided by the federal laws and regulations prescribed for the National Guard and the U.S. Army, Air Force, or Navy as applicable.”

Statutes Related to the National Guard: Courts-martial and Regulations

- ▶ “An offense committed by a member of the national guard shall be tried in civil courts and prosecuted by civil authorities except offenses of a purely military nature.” (20 V.S.A. § 941)
- ▶ Types of courts-martial for National Guard units on State Duty are established by 20 V.S.A. § 942a
 - ▶ Include a general court-martial, special court-martial, and summary court-martial
- ▶ Members of the National Guard are subject to the federal Uniform Code of Military Justice and Army or Air Force regulations when they are serving on federal duty pursuant to Title 10 of the U.S. Code.
- ▶ Members of the National Guard are subject to certain Army or Air Force regulations when they are serving pursuant to Title 32 of the U.S. Code

Calling out for State Duty

- ▶ The National Guard may be called out for State duty by:
 - ▶ The Commander-in-Chief [Governor]; or
 - ▶ in his or her absence, the Lieutenant Governor; or
 - ▶ in the absence of both, the Adjutant and Inspector General. (20 V.S.A. § 601)
- ▶ May be called out for:
 - ▶ riot, rebellion, or insurrection within the State; great opposition to the service of legal process, whether civil or criminal; invasion or imminent danger of invasion; or disaster or emergency proclaimed by the Governor (20 V.S.A. § 601)
 - ▶ To perform homeland defense duty (protection of territory, infrastructure, or other assets determined to be threatened or critical to national security) (32 U.S.C. ch. 9)
 - ▶ To perform operational activities (i.e. post-9/11 airport security and Hurricane Katrina response). (32 U.S.C. § 502)

Calling out for Federal Duty

- ▶ Voluntary Order to Active Duty: At any time, a member of the National Guard may be ordered to active duty voluntarily with his or her consent and the consent of the Governor (10 USC § 12301)
- ▶ Partial Mobilization: In time of national emergency declared by the President, any unit and any member may be ordered to active duty for up to 24 consecutive months (10 USC § 12302)
- ▶ Presidential Selected Reserve Call Up: When the President determines that it is necessary to augment the active forces or any operational mission, he may authorize the service secretaries to order any unit and any member to active duty for not more than 365 days (10 USC § 12304)
- ▶ Federal Aid to State Governors: Whenever an insurrection occurs in any state against its government, the President may, upon the request of its legislature or of its governor, if the legislature cannot be convened, call into federal service units from other states and use the armed forces, as he considers necessary to suppress the insurrection (10 USC § 331)
 - ▶ Exception to the Posse Comitatus Act.

Calling out for Federal Duty

- ▶ Use to Enforce Federal Authority: When the President determines that unlawful obstructions, combinations, assemblages, or rebellion against the authority of the U.S. make it impractical to enforce U.S. law in any state or territory by the ordinary course of judicial proceedings (10 U.S.C. § 332)
 - ▶ Exception to the Posse Comitatus Act.
- ▶ Interference with State and Federal Law: Suppression, in a state, of insurrection, domestic violence, unlawful combination, or conspiracy if it either (a) hinders the execution of state or federal law so that certain people are deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or (b) opposes or obstructs the execution of U.S. laws of the or impedes the course of justice under those laws (10 U.S.C. § 333)

Summary of State and Federal Duty

| | SAD | Title 32 | Title 10 |
|-----------------------------|---|--|--|
| Command and Control | State Governor | State Governor | President |
| Who Performs Duty | The Militia | The Federally-recognized militia (i.e. National Guard) | Active Component, Reserve Component and National Guard |
| Where Duty Performed | Continental US in accordance with State Law | Continental United States | Worldwide |
| Pay | In Accordance with State Law | Federal Pay & Allowances | Federal Pay & Allowances |

Rights and Employment Protections

- ▶ When a Guard Member is called out for State duty, he or she is entitled to:
 - ▶ leave without pay from his or her civilian job (20 V.S.A. § 608)
 - ▶ Job protection if he or she is absent from work because of training or State service for no more than **15** days in a calendar year (21 V.S.A. § 491(a))
 - ▶ A stay of State court proceedings (20 V.S.A. § 609)
 - ▶ Continuation of civilian employer-sponsored health insurance (21 V.S.A. § 492(c))
- ▶ When a Guard member is called up for federal duty, he or she is entitled to:
 - ▶ Job protected leave pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. §§ 4301-4333)
 - ▶ Continue civilian health insurance for up to 24 months or enrollment in TRICARE

The Adjutant General

- ▶ The commanding officer of the Vermont National Guard.
 - ▶ The Governor is the Commander-in-Chief when the National Guard is not serving on federal duty.
- ▶ Each state and U.S. territory has an adjutant general that leads its National Guard (32 U.S.C. § 312)
- ▶ Vermont is the only state whose Adjutant General is elected by the Legislature.
 - ▶ “The General Assembly shall biennially elect an Adjutant and Inspector General, who shall also be Quartermaster General with the rank of a major general.” (20 V.S.A. § 363)
 - ▶ “At 10 o'clock and 30 minutes, forenoon, on the seventh Thursday after their biennial meeting and organization, the Senate and House of Representatives shall meet in joint assembly and proceed therein to elect . . . the Adjutant and Inspector General . . .” (2 V.S.A. 10(a))

Prior Legislation to Amend the Adjutant General Selection Process

H.278 as passed House during 2015-2016

- ▶ Would have established standards for candidates for Adjutant General:
 - ▶ resident of Vermont
 - ▶ rank of lieutenant colonel (O-5) or above
 - ▶ current member of U.S. Army or Air Force, U.S. Army or Air Force Reserve, Army or Air National Guard, or be eligible to return to active service in Army or Air National Guard
 - ▶ Be a graduate of, enrolled in, or eligible to enroll in a Senior Service College during the biennium in which first appointed

Prior Legislation to Amend the Adjutant General Selection Process

H.278 as passed House during 2015-2016 (cont.)

- ▶ Would have created the Adjutant and Inspector General Recommendation Board to review and nominate candidates for Adjutant and Inspector General
 - ▶ Candidates would submit their names at least 4 months before election
 - ▶ Board would interview them and consider them on the basis of leadership, integrity, administrative and communicative skills, and other criteria established by the Board
 - ▶ Names of nominees would be submitted to Sec. of State at least 7 weeks before election
- ▶ Amendment by Senate removed the Board and bill died in conference committee

Prior Legislation to Amend the Adjutant General Selection Process

S.17 as passed Senate during 2017-2018

- ▶ Would have established standards for candidates for Adjutant General:
 - ▶ resident of Vermont
 - ▶ rank of lieutenant colonel (O-5) or above
 - ▶ current member of U.S. Army or Air Force, U.S. Army or Air Force Reserve, Army or Air National Guard, or be eligible to return to active service in Army or Air National Guard
 - ▶ Be a graduate of, enrolled in, or eligible to enroll in a Senior Service College during the biennium in which first appointed
- ▶ Bill passed Senate and died in the House

Prior Legislation to Amend the Adjutant General Selection Process

H.744 from 2017-2018

- ▶ Would have provided for Gubernatorial appointment instead of General Assembly's election of Adjutant General
- ▶ Would have created an Adjutant and Inspector General Nominating Board to review candidates on the basis of leadership, integrity, administrative and communicative skills
- ▶ Candidates would have to satisfy same basic standards regarding residency, rank, service, and eligibility for senior service college as in other bills
- ▶ Names of "well-qualified" candidates would be sent to Governor for consideration
- ▶ Bill did not make it out of committee in the House

▶ Any Questions?