DEPARTMENT OF MILITARY AFFAIRS

Report on the Utilization of the Virginia National Guard

In Response to Chapter 1043 Enactment Clause 2. (Regular Session, 2026)

LEGISLATIVE MANDATE:

Chapter 1043 Enactment Clause 2. (Regular Session, 2026) requires that the Secretary of Veterans and Defense Affairs convene a working group to provide answers to the following questions:

(i) What is the most appropriate manner and process by which the Governor and members of the General Assembly should respond to deployments of the Virginia National Guard within or outside of the Commonwealth, including when the Governor has not approved of, consented to, or concurred in any such deployment;

(ii) What is the proper response to mobilizations of the National Guard of another state in a state active-duty status within the Commonwealth; and

(iii) What safeguards, if any, are necessary to ensure that the Virginia National Guard cannot be called to duty to intimidate, harass, or threaten any person (a) in giving his vote or ballot or (b) to deter or prevent such person from voting.

Submission Deadline: November 1, 2026

REPORT CONTACT INFORMATION

Name: Timothy P. Williams

Title: Secretary of Veterans and Defense Affairs

Department: Department of Veterans and Defense Affairs

Phone: (804) 225-4317

Email: Timothy.Williams@governor.virginia.gov

PREFACE

Study Authority: Chapter 1043 Enactment Clause 2. (Regular Session, 2026)

Staff Assigned: Deputy Secretary Lesley Kipling; Ms. Mackenzie Heidelmark, Advisor on Intergovernmental Affairs; MG James Ring, The Adjutant General; BG Todd Hubbard, Director of the Joint Staff; MAJ Connor Miller, Executive Officer, Mr. Russell Woodlief, Staff Judge Advocate, CPT Peyton Siddall, Staff Judge Advocate

Broad Findings: The Code of Virginia and federal law provide ample protections against misuse of the Virginia National Guard while in a state active-duty status. These protections include the bases upon which the VNG may be called into state active duty as well as the various laws that prohibit interference with elections and voting.

Table of Contents

Executive Summary……iv

Introduction……1

Executive and Legislative Branch Response to Mobilizations of the VNG…… 1

Proper Response to Mobilizations of the National Guard of Another State Within the Commonwealth…….3

Safeguards Needed to Ensure the VNG Does Not Interfere with Election Activity……3

Conclusion……3

Executive Summary

The Virginia National Guard (VNG) is a dual-status force with a federal mission to provide the combat reserve for the U.S. Army and U.S. Air Force and a state mission to provide a response force that answers the call of the Governor in support of the citizens of the Commonwealth.

The VNG can be called to state active duty pursuant to § 44-75.1 of the Code of Virginia. The VNG can be called to federal duty pursuant to various sections of the United States Code

The Code of Virginia and federal law provide ample protections against misuse of the Virginia National Guard while in a state active-duty status. These protections include the bases upon which the VNG may be called into state active duty as well as the various laws that prohibit interference with elections and voting.

Introduction

The Virginia National Guard (VNG) is a dual-status force with a federal mission to provide the combat reserve for the U.S. Army and U.S. Air Force and a state mission to provide responsive forces when in dwell at the call of the Governor in support of the citizens of the Commonwealth.

The VNG primarily operates under Title 32 of the United States Code. The organization maintains a full-time force of approximately 1,500 personnel with an additional 6,700 Soldiers and Airmen serving in a traditional, part-time capacity. The part-time force performs duty on weekends (drill) and normally 15 days a year for annual training with additional duty required for professional military education, operational exercises, and administrative requirements. While in Title 32 status, all costs are borne by the federal government. Under Title 32 federal funding, the members of the VNG remain under the command and control of The Adjutant General and Governor of Virginia. Approximately 96% of all funding for the Virginia National Guard is provided by the federal government.

The VNG can be called to state active duty by only the Governor or their designee pursuant to § 44-75.1(A) and § 44-78.1 of the Code of Virginia. The Code of Virginia provides the specific basis for the mobilization of the VNG and acts as a limitation on the Governor's authority to utilize the VNG. All costs for state active duty are borne by the Commonwealth of Virginia. These costs may be reimbursed by federal entities in certain circumstances.

The VNG can be called to federal duty pursuant to various sections of the United States Code. When called to federal duty, the members of the VNG are removed from state control and are directed and funded solely by the federal government under Title 10 authorities.

What is the most appropriate manner and process by which the Governor and members of the General Assembly should respond to deployments of the Virginia National Guard within or outside of the Commonwealth, including when the Governor has not approved of, consented to, or concurred in any such deployment;

(i) Virginia National Guard in a State Active-Duty Status

Deployments of the VNG within and outside of the Commonwealth in a state active-duty status are governed by § 44-75.1 of the Code of Virginia. Section § 44-75.1 is restrictive and acts as a limitation on the Governor in their utilization of the VNG. State active-duty mobilizations typically begin with a request for assistance to the Virginia Department of Emergency Management (VDEM) by a state agency or locality. VDEM determines whether assistance will be offered and what state resource will be utilized to satisfy the request. If the VNG is to be called to state active duty in support of that request, the Governor is the mobilization authority. The General Assembly is notified of the details regarding state mobilizations initiated by a declaration of a state of emergency. This notification is accomplished by VDEM and includes details regarding the VNG state active-duty missions. If any member of the General Assembly were to disagree on the legality of the Governor's call to state active duty, they can utilize political processes to object to the mobilization and may ultimately file an action within the courts of the Commonwealth to stay the Governor's action. Upon information and belief, there has never been an action filed in the Commonwealth of Virginia to prevent a state active-duty mobilization of the VNG.

(ii) Virginia National Guard Federalized in a T32 Status

Utilization of the VNG pursuant to Title 32 of the United States Code is executed at the request and

under the operational control of the Governor of the Commonwealth and is funded by the federal government. This state-federal framework ensures that VNG personnel remain fully compliant with Department of Defense standards, preserving their capability to rapidly transition from Commonwealth support to federal missions. Title 32 primarily governs the training periods required to maintain unit and individual readiness.

National Guard members operating under federal Title 32 authority must strictly adhere to federal military regulations, policies, and training standards prescribed by the President, the Secretary of Defense, and the National Guard Bureau. This framework ensures that while the National Guard remains in dwell within the Commonwealth, its members maintain the same professional standards, medical readiness, and operational discipline as the joint force, facilitating seamless integration during federal missions.

An exception to the Governor's initiation of Title 32 duty for the Virginia National Guard is 32 U.S.C. § 502(f) which allows for the President or Secretary of Defense to request the use of a unit for certain missions but requires consent of the Governor. 32 U.S.C. § 901, *et seq*. governs homeland defense activities by National Guard servicemembers within the United States. Funding may be requested by the Governor or offered by the Secretary of Defense. During these homeland defense activities, the Secretary of Defense designates the critical national security assets under threat, while the Governor retains control of the forces protecting them.

(iii) Virginia National Guard in a Title 10 Status

Mobilizations of the Virginia National Guard within or outside of the Commonwealth by a federal call to Title 10 status is governed by the federal government through action by the President and the Secretary of Defense. The National Guard in a Title 10 status is governed by the Posse Comitatus Act, 18 U.S.C. § 1385 (PCA). The PCA prohibits the use of Title 10 servicemembers to engage in domestic law enforcement unless authorized by the inherent Constitutional authority to use force; Insurrection Act, 10 U.S.C. §§ 251-254; 10 U.S.C. §§ 271-281; and other individual exceptions. The PCA does not apply to the National Guard in Title 32 status.

The National Guard can be mobilized under 10 U.S.C. §§ 12301-12304 under Congressional declarations of war, national emergencies, and for named operational missions. These different statutes have separate allowances for troop numbers and length of service.

10 U.S.C. § 12406, the basis for 2025 federal mobilizations of National Guard troops and subject of focus in the 2026 legislative session, was read very narrowly by the Supreme Court of the United States in *Trump v. Illinois*, 607 U.S. ___ (2025) (slip op.). The President can activate the National Guard only when "unable with the regular forces to execute the laws of the United States", per 10 U.S.C. § 12406(3). The regular forces named must be the active-duty forces of the United States – that is, there must be authority to execute the laws of the United States with active-duty forces and the active-duty forces are unable to accomplish the mission. Because of PCA, this is an exceptionally narrow window.

Of note, the California National Guard was mobilized to respond to the 1992 Los Angeles Riots. This mobilization by President Bush was based upon the Insurrection Act, 10 U.S.C. § 332, *et seq (Now 10 U.S.C. 251, et seq).* The Insurrection Act has not been fully litigated. The Act allows the President to use armed forces or activate the militia of a State in order to enforce the laws of the United States or suppress an insurrection against a State or the federal government if a determination was made that state or non-state actors were preventing the laws from being executed, that any part or class of people within a State were denied their rights, or there was a rebellion. Before activation under

the Insurrection Act, 10 U.S.C. § 254 requires that the President must order the insurgents to disperse and retire peaceably before enforcing the laws with military forces or the militia.

The Supreme Court has affirmed the dual-enlistment status of Guard members, clarifying that state authority transitions to federal authority when Title 10 is invoked. Federal litigation remains the principal recourse mechanism for Governors and state legislatures to challenge, limit, or prevent federal Title 10 mobilizations.

What is the proper response to mobilizations of the National Guard of another state in a state active-duty status within the Commonwealth

Upon information and belief, there has never been a state active-duty mobilization of the National Guard of another state within the Commonwealth that has not been requested and agreed to by the Commonwealth. These mobilizations, under current law, are entered into through the Emergency Management Assistance Compact (EMAC) which was enacted into law through § 44-146.28:1 of the Code of Virginia. EMAC is a national compact entered into by 50 states, the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands and the Northern Mariana Islands. The compact provides a process by which a state may request assistance from another state for their state public safety assets, to include the National Guard in a state active-duty status. EMAC is a valuable tool to assist in responding to manmade and natural disasters.

What safeguards, if any, are necessary to ensure that the Virginia National Guard cannot be called to duty to intimidate, harass, or threaten any person (a) in giving his vote or ballot or (b) to deter or prevent such person from voting.

§ 24.2- 607 of the Code of Virginia makes it unlawful for any person to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot. This code section is supplemented by § 24.2-1005 and 1005.2. These provisions further prohibit the same type of conduct by any person "acting under color of law" and provide a civil penalty and civil cause of action for this conduct.

These prohibitions apply to military service members in Title 10 and Title 32 status.

In addition, § 44-75.1 of the Code of Virginia, which provides the authorization to mobilize into state active-duty, does not provide for a mission to interfere with voting rights. As of 1 July 2026, § 44-75.1C specifically prohibits "the use of the NG for the purpose of intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person (i) in giving his vote or ballot or (ii) to deter or prevent such person from voting."

Conclusion

The Code of Virginia and federal law provide ample protections against misuse of the Virginia National Guard while in a state active-duty status. These protections include the basis upon which the VNG may be called into state active duty as well as the various laws that prohibit interference with elections and voting.

Virginia Guard members may only be called to Title 32 federal duty with the consent of the Governor. This requirement limits the ability of the federal government to utilize the VNG in matters related to voting and elections. In addition, servicemembers in a federal status are still prohibited from election and voting interference by the criminal laws of the

Commonwealth.

Virginia Guard members who are called to Title 10 federal duty are limited by posse comitatus, as well as the criminal laws of Virginia.