**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 23 TO CHAPTER 1, TITLE 25 ENTITLED “SOUTH CAROLINA DEFEND THE GUARD ACT” SO AS TO REQUIRE THE GOVERNOR TO CONDUCT A LEGAL REVIEW OF ALL EXISTING AND FUTURE ORDERS THAT CALL, TRANSFER, OR PLACE THE SOUTH CAROLINA NATIONAL GUARD, OR ANY OF ITS SUBORDINATE COMMANDS, UNITS, OR PERSONNEL ON FEDERAL ACTIVE DUTY OR UNDER FEDERAL CONTROL; TO REQUIRE THE GOVERNOR, NOTWITHSTANDING ANOTHER PROVISION OF LAW, TO WITHHOLD, WITHDRAW, OR REVOKE, OR CAUSE TO BE WITHHELD, WITHDRAWN, OR REVOKED ALL STATE ORDERS, APPROVALS, OR AUTHORIZATIONS RELATING TO THE CALL, TRANSFER, OR PLACEMENT OF THE SOUTH CAROLINA NATIONAL GUARD, OR ANY OF ITS SUBORDINATE COMMANDS, UNITS, OR PERSONNEL ON FEDERAL ACTIVE DUTY OR UNDER FEDERAL CONTROL UNDER CERTAIN CIRCUMSTANCES; AND TO REQUIRE THE GOVERNOR TO SUBMIT A REPORT SUMMARIZING HIS FINDINGS AND ACTIONS TO THE GENERAL ASSEMBLY WITHIN THIRTY DAYS AFTER THE COMPLETION OF HIS REVIEW.

Whereas, under the U.S. Constitution, each state’s national guard is a defensive force controlled by the governor, but can be called up for federal duty by the federal government, provided that this duty is pursuant to the U.S. Constitution; and

Whereas, the U.S. Constitution, Article I, Section 8 delegates to the U.S. Congress the power to provide for “calling forth the militia” in the following three situations only: to execute the laws of the union; to suppress insurrections; and to repel invasions; and

Whereas, James Monroe, member of the Virginia Ratifying Convention, seventh U.S. Secretary of State, and fifth President of the United States, wrote in 1815, “Congress shall have power to provide for calling forth the militia to execute the laws of the Union; what laws? All laws which may be constitutionally made”; and

Whereas, the Tenth Amendment to the U.S. Constitution reads as follows: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”; and

Whereas, the Tenth Amendment defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government in the U.S. Constitution; and

Whereas, Daniel Webster, in his 1814 speech on the floor of U.S. House of Representatives, said, “The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State Governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State Governments exist.” Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 25 of the 1976 Code is amended by adding:

“Article 23

South Carolina Defend the Guard Act

Section 25‑1‑4310. Notwithstanding another provision of law, the Governor shall examine, consider, and review every federal order, to include all existing orders, that call, transfer, or place the South Carolina National Guard, or any of its subordinate commands, units, or personnel on federal active duty or under federal control for the purpose of determining whether the order is lawful pursuant to the U.S. Constitution, Article I, Section 8. In fulfilling his responsibilities pursuant to this section, the Governor, in his discretion, may request the assistance of the South Carolina Attorney General. If the Governor determines that the order is unlawful, he shall take all appropriate actions to prevent the National Guard from being called, transferred, placed, or kept on federal active duty or under federal control.

Section 25‑1‑4320. Notwithstanding another provision of law, upon completion of the legal review required pursuant to this article, the Governor immediately shall withhold, withdraw, or revoke, or cause to be withheld, withdrawn, or revoked all state approvals, authorizations, or orders relating to the call, transfer, or placement of the South Carolina National Guard, or any of its subordinate commands, units, or personnel on federal active duty or under federal control in the absence of:

(1) a military invasion of the United States;

(2) an insurrection; or

(3) a calling forth of the South Carolina National Guard by the federal government in a manner provided for by the U.S. Congress to execute the laws of the United States, provided that these laws were made pursuant to powers delegated to the United States by the U.S. Constitution.

Section 25‑1‑4330. Notwithstanding another provision of law, within thirty days after the completion of the legal review required pursuant to this article, the Governor shall submit a report to the Speaker of the House of Representatives, the President of the Senate, and to the chairmen of the standing committees of the General Assembly that possess primary subject matter jurisdiction over South Carolina military affairs. This report shall summarize his review of the orders described in Section 25‑1‑4310 placing the National Guard on federal active duty or under federal control and the actions, if any, he has taken in response to his review.”

SECTION 2. This act takes effect upon approval by the Governor.

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