AMENDMENT TO H.R. 1540, AS REPORTED
OFFERED BY MR. POE OF TEXAS

At the end of subtitle B of title V add the following:

SEC. 515. USE OF NATIONAL GUARD TO SUPPORT DEPARTMENT OF HOMELAND SECURITY BORDER CONTROL ACTIVITIES.

(a) Expanded deployment of National Guard;

Duration.—

(1) Deployment; duration.—In addition to the number of members of the National Guard deployed along the international border between the United States and Mexico as of the date of the enactment of this Act, the Secretary of Defense shall provide for the deployment of not less than an additional 10,000 members of the National Guard along the international border between the United States and Mexico until the date on which the Secretary of Homeland Security certifies that the Federal Government has achieved operational control of the international border.

(2) Additional deployments.—The Secretary of Defense may exceed the number specified in paragraph (1) at the request of a Governor of a
State that shares a portion of the international border between the United States and Mexico if, despite the deployment of the additional 10,000 members of the National Guard along the international border, operational control of the international border has not been achieved.

(3) Deployment Authorities.—Members of the National Guard required to be deployed pursuant to paragraph (1) may be deployed under section 502(f) of title 32, United States Code, pursuant to a State border control activities plan approved under section 112a of such title, as added by subsection (b), or pursuant to the order of the Secretary of Defense under any other provision of law.

(4) Exemption from End Strengths and Other Limitations.—Members of the National Guard deployed pursuant to paragraph (1) shall not be included in the calculation to determine compliance with—

(A) limits on end strength; or

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

(5) Operational Control Defined.—In this subsection, the term “operational control” has the

(b) Federal Assistance for State Border Control Activities Plans.—Chapter 1 of title 32, United States Code, is amended by inserting after section 112 the following:

“SEC. 112a. BORDER CONTROL ACTIVITIES.

“(a) FUNDING ASSISTANCE.—The Secretary of Defense shall provide funds to the Governor of a State who submits to the Secretary a State border control activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following:

“(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of border control activities.

“(2) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of border control activities.

“(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State used for the purpose of border
control activities. However, the use of such funds for the procurement of equipment may not exceed $5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.

“(b) USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.—(1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State border control activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out border control activities.

“(2)(A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out border control activities. The member is not entitled to additional pay, allowances, or other benefits for partici-
participation in training required under section 502(a)(1) of this title.

“(B) Appropriations available for the Department of Defense for homeland defense may be used for paying costs associated with a member’s participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

“(C) To ensure that the use of units and personnel of the National Guard of a State pursuant to a State border control activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the border control activities that units and personnel of the National Guard of a State may perform:

“(i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National
Guard to perform the military functions of the member or unit.

“(ii) National Guard personnel will not degrade their military skills as a result of performing the activities.

“(iii) The performance of the activities will not result in a significant increase in the cost of training.

“(iv) In the case of border control activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

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

“(1) specify how personnel of the National Guard of that State are to be used in border control activities in support of the mission of the United States Customs and Border Protection of the Department of Homeland Security;

“(2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;

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

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

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

“(6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan that are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

“(d) EXAMINATION OF PLAN.—Before funds are provided to the Governor of a State under this section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of Defense shall, in consultation with the Secretary of Homeland Security, examine the
The adequacy of the plan submitted by the Governor under subsection (c). The plan as approved by the Secretary of Defense may provide for the use of personnel and equipment of the National Guard of that State to assist United States Customs and Border Protection in the transportation of aliens who have violated a Federal immigration law.

“(e) End Strength Limitation.—(1) Except as provided in paragraphs (2) and (3), at the end of a fiscal year there may not be more than 10,000 members of the National Guard—

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

“(B) on duty under State authority to perform border control activities pursuant to an order to duty with State pay and allowances being reimbursed with funds provided under subsection (a)(1).

“(2) The Secretary of Defense may increase the end strength authorized under paragraph (1) if the Secretary determines that such an increase is necessary in the national security interests of the United States.
“(3) National Guard personnel deployed pursuant to paragraph (1) shall not be included in the calculation to determine compliance with—

“(A) limits on end strength; or

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

“(f) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report regarding assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

“(1) The number of members of the National Guard excluded under subsection (e) from the computation of end strengths.

“(2) A description of the border control activities conducted under State border control activities plans referred to in subsection (e) with funds provided under this section.

“(3) An accounting of the amount of funds provided to each State.

“(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State border control activities plans.
“(g) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

“(h) DEFINITIONS.—In this section:

“(1) The term ‘border control activities’, with respect to the National Guard of a State, means the use of National Guard personnel in border control activities authorized by the law of the State and requested by the Governor of the State in support of the mission of the United States Customs and Border Protection of the Department of Homeland Security, including activities as follows:

“(A) Armed vehicle and foot patrols along the international border between the United States and Mexico.

“(B) Interdiction of a vehicle, vessel, aircraft or other similar activity.

“(C) Search, seizure, and detention of suspects.

“(D) Construction of roads, fences, and vehicle barriers.

“(E) Search and rescue operations.
“(F) Intelligence gathering, surveillance, and reconnaissance.

“(G) Aviation support.

“(2) The term ‘Governor of a State’ means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

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

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of such title is amended by inserting after the item relating to section 112 the following new item:

“112a. Border control activities.”.