

**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:

1 **SEC. 515. USE OF NATIONAL GUARD TO SUPPORT DEPART-**
2 **MENT OF HOMELAND SECURITY BORDER**
3 **CONTROL ACTIVITIES.**

4 (a) EXPANDED DEPLOYMENT OF NATIONAL GUARD;
5 DURATION.—

6 (1) DEPLOYMENT; DURATION.—In addition to
7 the number of members of the National Guard de-
8 ployed along the international border between the
9 United States and Mexico as of the date of the en-
10 actment of this Act, the Secretary of Defense shall
11 provide for the deployment of not less than an addi-
12 tional 10,000 members of the National Guard along
13 the international border between the United States
14 and Mexico until the date on which the Secretary of
15 Homeland Security certifies that the Federal Gov-
16 ernment has achieved operational control of the
17 international border.

18 (2) ADDITIONAL DEPLOYMENTS.—The Sec-
19 retary of Defense may exceed the number specified
20 in paragraph (1) at the request of a Governor of a

1 State that shares a portion of the international bor-
2 der between the United States and Mexico if, despite
3 the deployment of the additional 10,000 members of
4 the National Guard along the international border,
5 operational control of the international border has
6 not been achieved.

7 (3) DEPLOYMENT AUTHORITIES.—Members of
8 the National Guard required to be deployed pursu-
9 ant to paragraph (1) may be deployed under section
10 502(f) of title 32, United States Code, pursuant to
11 a State border control activities plan approved under
12 section 112a of such title, as added by subsection
13 (b), or pursuant to the order of the Secretary of De-
14 fense under any other provision of law.

15 (4) EXEMPTION FROM END STRENGTHS AND
16 OTHER LIMITATIONS.—Members of the National
17 Guard deployed pursuant to paragraph (1) shall not
18 be included in the calculation to determine compli-
19 ance with—

20 (A) limits on end strength; or

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

24 (5) OPERATIONAL CONTROL DEFINED.—In this
25 subsection, the term “operational control” has the

1 meaning given that term in section 2(b) of the Se-
2 cure Fence Act of 2006 (Public Law 109-367; 8
3 U.S.C. 1701 note).

4 (b) FEDERAL ASSISTANCE FOR STATE BORDER CON-
5 TROL ACTIVITIES PLANS.—Chapter 1 of title 32, United
6 States Code, is amended by inserting after section 112 the
7 following:

8 **“SEC. 112a. BORDER CONTROL ACTIVITIES.**

9 “(a) FUNDING ASSISTANCE.—The Secretary of De-
10 fense shall provide funds to the Governor of a State who
11 submits to the Secretary a State border control activities
12 plan satisfying the requirements of subsection (c). Such
13 funds shall be used for the following:

14 “(1) The pay, allowances, clothing, subsistence,
15 gratuities, travel, and related expenses, as author-
16 ized by State law, of personnel of the National
17 Guard of that State used, while not in Federal serv-
18 ice, for the purpose of border control activities.

19 “(2) The operation and maintenance of the
20 equipment and facilities of the National Guard of
21 that State used for the purpose of border control ac-
22 tivities.

23 “(3) The procurement of services and equip-
24 ment, and the leasing of equipment, for the National
25 Guard of that State used for the purpose of border

1 control activities. However, the use of such funds for
2 the procurement of equipment may not exceed
3 \$5,000 per item, unless approval for procurement of
4 equipment in excess of that amount is granted in ad-
5 vance by the Secretary of Defense.

6 “(b) USE OF PERSONNEL PERFORMING FULL-TIME
7 NATIONAL GUARD DUTY.—(1) Under regulations pre-
8 scribed by the Secretary of Defense, personnel of the Na-
9 tional Guard of a State may, in accordance with the State
10 border control activities plan referred to in subsection (c),
11 be ordered to perform full-time National Guard duty
12 under section 502(f) of this title for the purpose of car-
13 rying out border control activities.

14 “(2)(A) A member of the National Guard serv-
15 ing on full-time National Guard duty under orders
16 authorized under paragraph (1) shall participate in
17 the training required under section 502(a) of this
18 title in addition to the duty performed for the pur-
19 pose authorized under that paragraph. The pay, al-
20 lowances, and other benefits of the member while
21 participating in the training shall be the same as
22 those to which the member is entitled while per-
23 forming duty for the purpose of carrying out border
24 control activities. The member is not entitled to ad-
25 ditional pay, allowances, or other benefits for partici-

1 pation in training required under section 502(a)(1)
2 of this title.

3 “(B) Appropriations available for the De-
4 partment of Defense for homeland defense may
5 be used for paying costs associated with a mem-
6 ber’s participation in training described in sub-
7 paragraph (A). The appropriation shall be reim-
8 bursed in full, out of appropriations available
9 for paying those costs, for the amounts paid.
10 Appropriations available for paying those costs
11 shall be available for making the reimburse-
12 ments.

13 “(C) To ensure that the use of units and
14 personnel of the National Guard of a State pur-
15 suant to a State border control activities plan
16 does not degrade the training and readiness of
17 such units and personnel, the following require-
18 ments shall apply in determining the border
19 control activities that units and personnel of the
20 National Guard of a State may perform:

21 “(i) The performance of the activities
22 may not adversely affect the quality of that
23 training or otherwise interfere with the
24 ability of a member or unit of the National

1 Guard to perform the military functions of
2 the member or unit.

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

6 “(iii) The performance of the activi-
7 ties will not result in a significant increase
8 in the cost of training.

9 “(iv) In the case of border control ac-
10 tivities performed by a unit organized to
11 serve as a unit, the activities will support
12 valid unit training requirements.

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

15 “(1) specify how personnel of the National
16 Guard of that State are to be used in border control
17 activities in support of the mission of the United
18 States Customs and Border Protection of the De-
19 partment of Homeland Security;

20 “(2) certify that those operations are to be con-
21 ducted at a time when the personnel involved are not
22 in Federal service;

23 “(3) certify that participation by National
24 Guard personnel in those operations is service in ad-

1 dition to training required under section 502 of this
2 title;

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

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

14 “(6) certify that the Governor of the State or
15 a civilian law enforcement official of the State des-
16 ignated by the Governor has determined that any ac-
17 tivities included in the plan that are carried out in
18 conjunction with Federal law enforcement agencies
19 serve a State law enforcement purpose.

20 “(d) EXAMINATION OF PLAN.—Before funds are pro-
21 vided to the Governor of a State under this section and
22 before members of the National Guard of that State are
23 ordered to full-time National Guard duty as authorized in
24 subsection (b), the Secretary of Defense shall, in consulta-
25 tion with the Secretary of Homeland Security, examine the

1 adequacy of the plan submitted by the Governor under
2 subsection (c). The plan as approved by the Secretary of
3 Defense may provide for the use of personnel and equip-
4 ment of the National Guard of that State to assist United
5 States Customs and Border Protection in the transpor-
6 tation of aliens who have violated a Federal immigration
7 law.

8 “(e) END STRENGTH LIMITATION.—(1) Except as
9 provided in paragraphs (2) and (3), at the end of a fiscal
10 year there may not be more than 10,000 members of the
11 National Guard—

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

16 “(B) on duty under State authority to per-
17 form border control activities pursuant to an
18 order to duty with State pay and allowances
19 being reimbursed with funds provided under
20 subsection (a)(1).

21 “(2) The Secretary of Defense may increase the
22 end strength authorized under paragraph (1) if the
23 Secretary determines that such an increase is nec-
24 essary in the national security interests of the
25 United States.

1 “(3) National Guard personnel deployed pursu-
2 ant to paragraph (1) shall not be included in the cal-
3 culation to determine compliance with—

4 “(A) limits on end strength; or

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

8 “(f) ANNUAL REPORT.—The Secretary of Defense
9 shall submit to Congress an annual report regarding as-
10 sistance provided and activities carried out under this sec-
11 tion during the preceding fiscal year. The report shall in-
12 clude the following:

13 “(1) The number of members of the National
14 Guard excluded under subsection (e) from the com-
15 putation of end strengths.

16 “(2) A description of the border control activi-
17 ties conducted under State border control activities
18 plans referred to in subsection (e) with funds pro-
19 vided under this section.

20 “(3) An accounting of the amount of funds pro-
21 vided to each State.

22 “(4) A description of the effect on military
23 training and readiness of using units and personnel
24 of the National Guard to perform activities under
25 the State border control activities plans.

1 “(g) STATUTORY CONSTRUCTION.—Nothing in this
2 section shall be construed as a limitation on the authority
3 of any unit of the National Guard of a State, when such
4 unit is not in Federal service, to perform law enforcement
5 functions authorized to be performed by the National
6 Guard by the laws of the State concerned.

7 “(h) DEFINITIONS.—In this section:

8 “(1) The term ‘border control activities’, with
9 respect to the National Guard of a State, means the
10 use of National Guard personnel in border control
11 activities authorized by the law of the State and re-
12 quested by the Governor of the State in support of
13 the mission of the United States Customs and Bor-
14 der Protection of the Department of Homeland Se-
15 curity, including activities as follows:

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

19 “(B) Interdiction of a vehicle, vessel, air-
20 craft or other similar activity.

21 “(C) Search, seizure, and detention of sus-
22 pects.

23 “(D) Construction of roads, fences, and ve-
24 hicle barriers.

25 “(E) Search and rescue operations.

1 “(F) Intelligence gathering, surveillance,
2 and reconnaissance.

3 “(G) Aviation support.

4 “(2) The term ‘Governor of a State’ means, in
5 the case of the District of Columbia, the Com-
6 manding General of the National Guard of the Dis-
7 trict of Columbia.

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

12 (c) CLERICAL AMENDMENT.—The table of sections
13 at the beginning of chapter 1 of such title is amended by
14 inserting after the item relating to section 112 the fol-
15 lowing new item:

“112a. Border control activities.”.

