



**Steve Bullock**  
Governor of Montana  
Chair

**Larry Hogan**  
Governor of Maryland  
Vice Chair

**Scott D. Pattison**  
Executive Director and CEO

April 10, 2019

The Honorable James Inhofe  
Chairman  
Senate Armed Services Committee  
218 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Adam Smith  
Chairman  
House Armed Services Committee  
2216 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Jack Reed  
Ranking Member  
Senate Armed Services Committee  
218 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Mac Thornberry  
Ranking Member  
House Armed Services Committee  
2216 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Inhofe, Ranking Member Reed, Chairman Smith and Ranking Member Thornberry:

On behalf of the National Governors Association (NGA), we write to you regarding the top legislative priorities for the nation’s governors for inclusion in this year’s National Defense Authorization Act (NDAA).

**National Guard Response to Catastrophic Disasters**

Last year, the presidentially appointed and bipartisan Council of Governors (Council) wrote to you regarding its work with the Department of Defense, Department of Homeland Security and the White House around their joint efforts in identifying and improving the response to catastrophic incidents. Specifically, governors worked through the Council to find a solution to our collective concern over the lack of a formal process for governors to request the activation of our National Guard under Title 32 in response to a presidentially declared catastrophic disaster.

As seen over the past few years, large scale, catastrophic disasters require a more dramatic, rapid and holistic response. States have responded to these events at a moment’s notice, without thought to the impact on their own budgets and spending, as they know it is the right thing to do. However, given the unprecedented scale of these disasters, the response cannot be supported by states alone for such prolonged periods of time.

Specifically, we believe the current framework does not afford Guardsmen and women deploying over long distances and for long durations in response to emergencies the same protections and benefits as federal forces who also respond. Governors believe it is critical that the nation ensures equal protections for all those put in harm’s way, regardless of duty status.

States also face dramatic fiscal and cash-flow impacts during and after these catastrophic events. The large number of personnel necessary to respond, compounded by the duration of the response, can lead to unsustainable missions at the state level. The wellbeing of our guard members and citizens is implicated by balanced budget amendment restrictions in several states, delays due to the timing of legislative sessions or emergency sessions, and years-long reimbursement processes after the event.

In reviewing the legal interpretation from the Department of Defense last year, the Council articulated to Congress and the NGA its belief that the current authorities for the use of our National Guard are insufficient to meet the needs of responding to these events.



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Governors believe the use of Title 32, 502(f) in catastrophic situations will improve our collective response, ease the economic burden on states and ensure the wellbeing of our National Guard members and their families. The payment process would be streamlined through the Department of Defense's payment system, rather than diffused among 54 varying state systems and policies. The Guard and their families would not have to worry about their paychecks when responding to these disasters should Title 32 be authorized.

It is important to note that governors are not requesting the use of Title 32 for everyday disasters we see in our states, which would be unsustainable for the federal government. In most instances, our Emergency Management Assistance Compacts (EMAC) and the use of National Guard members in state active duty status is sufficient to meet the needs of disaster response.

Therefore, we ask that you include language in the Fiscal Year 2020 NDAA that would allow the President and the Secretary of Defense, with the approval of the state or territorial governor, the ability to authorize National Guard under Title 32, section 502 (f) in the event of a presidentially declared catastrophic disaster. We believe this will help to enhance response efforts and provide standardized protection and benefits for all military personnel.

Attached you will find recommended language for consideration. The proposed language is not a mandate to the Department of Defense, rather it provides an additional tool for response efforts. We stand ready to work with the federal government to identify the appropriate requirements for authorizing this authority.

### **Reserve Component Duty Status Reform**

It is our understanding that the Department of Defense will shortly provide Congress with its recommendation for duty status reform legislation. Overall, governors are supportive of changes in law that provide parity amongst components, ensure minimal disruption to compensation and benefits, and ease the transition for our service members, especially our respective National Guards.

However, we find unacceptable any efforts included in duty status reform legislation this year that modifies the Insurrection Act to allow the President of the United States sole discretion regarding the number of troops deployed in a state or removes the statutory requirement under Title 32 of United States Code requiring the President or the Secretary of Defense obtain a governor's permission before ordering a member of their state militia to full-time duty..

The Fiscal Year 2007 National Defense Authorization Act widened the President's ability to deploy troops within the United States and was completely repealed the following year after additional scrutiny.

Since NGA has not been consulted, nor seen any proposed legislation from the Department, we request Congress prohibit any action on the part of the federal government or language in the NDAA that strips the authority of governors as commanders-in-chief of our respective National Guards. This is unacceptable and contrary to the principles of federalism and the Constitution.

### **National Guard Full Time Support and End Strength**

Governors and our adjutants general continue to support the growth of National Guard personnel end-strength and full-time support positions. The National Guard saw a significant cut due to the Budget Control Act along with the Department. Despite congressional budget deal increases, the Guard has seen a smaller fraction of the overall Department of Defense end-strength growth over the past several years. Governors are concerned about this trend considering both the national security and defense strategies provide a renewed focus on defending the homeland.



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Our concerns are compounded by the recent large-scale catastrophic disasters we have seen across the country in our states. Without this increase, governors continue to have serious concerns about the Guard’s ability to maintain a level of readiness that achieves both operational requirements and governors’ immediate response needs in the states. The dual nature of the National Guard, and the needs of the nation in responding to both natural and man-made disasters, necessitates the reallocation of manpower and resources to our Guard.

NGA requests Congress provide an increase in end-strength authorization for the National Guard, to include growth in full-time support positions for the National Guard.

**Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA):**

As you know, the Department of Defense continues to take efforts to identify and isolate PFOS and PFOA contaminants in drinking water supplies at their facilities. However, there is significant uncertainty on the roles and responsibilities as it relates to National Guard facilities, which in many instances are owned and operated by the states but must remain compliant with federal standards.

Due to the inability of many Guard installations to access the Department’s Defense Environmental Restoration Program accounts, the National Guard Bureau has been forced to fund these efforts through Operation and Maintenance funds. This model is unsustainable in the long run and forces the National Guard Bureau to make tradeoffs in overall readiness.

NGA requests that Congress provide increased resources for Guard accounts to help identify, test and remediate these contaminants at military installations, to include access to the Department’s Defense Environmental Restoration Program.

Thank you for your continued support of these top NGA priorities for the Fiscal Year 2020 NDAA and for our National Guard. For additional questions related to any of the above NGA priorities, please reach out to Ms. Mary Catherine Ott ([mcott@nga.org](mailto:mcott@nga.org); 202-719-2867), NGA’s legislative director for Homeland Security and Public Safety.

Sincerely,

Governor Steve Bullock  
Chair  
National Governors Association

Governor Larry Hogan  
Vice Chair  
National Governors Association

Cc:  
House Armed Service Committee  
Senate Armed Services Committee

Attachments:  
Council of Governors 2018 Letter to Congress  
Title 32 Authorization Recommended Language