



Vermont



Washington

February 12, 2010

The Honorable Robert M. Gates  
Secretary  
U.S. Department of Defense  
The Pentagon  
Washington, DC 20301

Dear Secretary Gates:

In our capacity as co-chairs of the Council of Governors (Council), we thank you for hosting the first meeting of the Council on February 23, 2010. We look forward to discussing the attached agenda with you.

As you know, the Council was required by the National Guard Empowerment Act of 2007 to create a forum in which governors may consult with federal defense and homeland security leaders on issues regarding the National Guard, homeland defense, military support to civil authorities and the integration of state and federal military activities. The transition of our nation's National Guard from a strategic reserve to a ready operational force that supports combatant commanders and defends our homeland daily, raises a number of issues we look forward to discussing with you, including: the tactical control of federal military forces when engaged in domestic operations; resources to support the homeland defense mission; modernizing and sustaining the Air and Army National Guard; funding for National Guard military construction and the other items set forth in the attached agenda.

We understand the Department of Defense (DoD) would like to discuss a proposal to expand existing authorities to mobilize the reserve forces for domestic emergency response. We would like to better understand the need to do so from your perspective. We also look forward to hearing your response to the attached National Governors Association (NGA) policy statement on control of military forces engaged in domestic operations. While this is an important issue, we do not intend for it to be the sole focus of the first Council meeting.

We look forward to engaging with you on these and other issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Douglas".

Governor James H. Douglas

A handwritten signature in black ink, appearing to read "Chris Gregoire".

Governor Christine O. Gregoire

cc: The Honorable Janet Napolitano, Secretary, U.S. Department of Homeland Security  
Ray Scheppach, Executive Director, National Governors Association

# COUNCIL OF GOVERNORS

*February 23, 2010*  
*10:00 am – 12:00 pm*

## I. Introductions

- a. Council Members
- b. Federal Participants

## II. Charter

## III. Administrative Support Arrangements

## IV. Formation of Working Groups and Other Methods of Addressing Issues Between Council Meetings

## V. Discussion of Governors' Priority Issues

- a. Air National Guard Recapitalization
- b. Army National Guard Recapitalization
- c. Military Construction
- d. End Strength
- e. Combat Aviation Brigade
- f. Contiguous Mobilization
- g. CBRNE Response Forces
- h. Control of Domestic Military Operations

## VI. Discussion of Federal Priorities

## VII. Future Meetings

## NGA Policy Statement



### HHS-03. Army and Air National Guard

#### 3.1 Preamble

The relationship between the federal government and the states regarding defense of the homeland continues to evolve. Since September 11, 2001, our national leaders have had a paradigm shift in their thinking on national defense. The National Guard of the United States is no longer considered a strategic reserve. It is now recognized as a ready operational force that not only supports Combatant Commanders around the world, but also defends the homeland every day.

Today's active forces, constrained in size and scope by the enormous cost of personnel and material, must rely on the National Guard as a ready and well-trained "operational reserve" combat force. Realizing that approximately one-half of the defense budget is attributed to personnel cost, the Guard, which receives only a fraction of a month's pay when not activated, represents a cost-effective way to protect our national security and provide for a professionally trained and committed Army and Air Force for the national defense.

Governors wish to emphasize that they command the National Guard of their respective states and territories, and that the Guard is the only military force that the governor can call upon to respond to disasters and other emergencies. Thus, governors have an enormous stake in the ongoing effectiveness and efficiency of their National Guard.

Governors note that national defense strategy requires the Army and Air National Guard to be capable of fighting with the active forces. In keeping with the "Total Force Policy," many active units cannot enter into combat as effective units unless accompanied by mobilized elements of the National Guard. The National Guard must be properly equipped, efficiently trained, and fully staffed to meet these responsibilities. As ably demonstrated in Operation Enduring Freedom and Operation Iraqi Freedom, natural disaster response, and national special security events, the National Guard has fulfilled its combat and domestic support roles in a superb manner.

#### 3.2 Control of the Guard

**3.2.1 Gubernatorial Authorities.** Governors wish to emphasize that, unless and until activated for federal service, the National Guard is under the control of the governors as commanders-in-chief. We call attention to the U.S. Constitution, Article I, Section 8, clause 16, which enables Congress:

to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress . . .

Title 32 of the United States Code (USC) affirms governors' command and control over the National Guard in peacetime, including use of the National Guard for domestic operations, without any restraints

## NGA Policy Statement

such as those pertaining to the Posse Comitatus Act. Title 10 of the USC is focused primarily on the use of active duty military forces to deal with war and other national defense crises. The Guard can be activated under Title 10 as a part of the forces under the command of the President of the United States. Governors believe that when National Guard members perform domestic missions they should do so in State Active Duty or Title 32 status rather than Title 10 status, unless and until the President has activated their unit under Title 10 for a federal mission requiring federal military forces, such as to repel an invasion.

In order to carry out their homeland defense and homeland security responsibilities, governors must retain command and control over the domestic use of their own National Guard forces and supporting National Guard forces from other states operating within the supported governor's state or territory. For the same reasons, when a Dual Status Command has not been established under 32 USC 325, governors, acting through their Adjutants General and Joint Force Headquarters-State, must have tactical control over all Title 10 active duty and reserve military forces engaged in domestic operations within the governor's state or territory. Exceptions to this are : (1) if the application of lethal military force is required to repel an invasion or attack against the United States; and/or (2) if National Guard forces in state active duty or Title 32 status are being used to resist a lawful order of the executive or judicial branch of the federal government. In these two instances, a governor's tactical control of Title 10 military forces would be inappropriate and federal activation of the governor's National Guard forces under Title 10 USC for domestic operations should be authorized. Unless or until governors are given tactical control over Title 10 active duty and reserve military forces engaged in domestic operations within their state or territory, governors support the congressional rejection of provisions to change the Insurrection Act to allow the President to call-up and domestically deploy federal reservists during the response to a domestic event.

**3.2.2 Dual Status Command.** As an alternative to granting a governor tactical control over Title 10 domestic military operations in the governor's state or territory, governors recognize that a Dual-Status National Guard commander can be appointed by the respective governor and the President pursuant to 32 USC Section 325. Pursuant to such appointment, the Dual Status National Guard commander would have command and control of all active, Guard, and reserve military personnel deployed to or within the state in support of or in response to the domestic event or emergency. Both federal reserve forces called to duty for an emergency, and follow-on, later arriving active duty forces should fall under the command and control of the dual-hatted commander.

Governors understand that, if an emergency rises to a level of significance such that federal law or the Constitution permits the President or Congress to declare the event under federal control, the National Guard can be activated under Title 10 and would then serve directly under the President's command and control for the domestic event or emergency.

### **3.3 Role of the National Guard in Domestic Disasters and Terrorism Response**

Historically, the National Guard has served as a critical resource in emergencies and can be an effective force multiplier to civil authorities in responding to acts of terrorism at the state, local, and federal levels. In the wake of the September 11, 2001, terrorist attacks, the National Guard has expanded its traditional role in homeland defense and homeland security and readily supports local, territorial, state, and federal response agencies with needed equipment, facilities, and personnel. National Guard activities such as conducting vulnerability assessments; planning, training, and exercising with civilian emergency responders; and securing strategic facilities, such as airports, pharmaceutical labs, nuclear power plants, communications towers, and border crossings, have been a cornerstone in protecting our citizens from domestic acts of terrorism. The U.S. Department of Defense (DoD) should reaffirm these activities as an integral part of the ongoing mission of the National Guard and ensure the Guard is provided the funding,

## NGA Policy Statement

training, equipment, and other resources necessary to fully meet the additional responsibilities inherent in today's homeland defense environment.

An emerging need is to construct or alter facilities to sustain and promote unit and individual readiness, support evolving and increased logistic needs, and provide military support to civil authorities during domestic emergencies. In addition to the other capital needs, DoD should increase funding for National Guard facilities to reduce the backlog of military construction projects.

**3.3.1 Mutual Aid.** The National Guard has established Joint Force Headquarters in each state to coordinate and integrate National Guard support to state and local civilian authorities, and receive and integrate the Guard forces dispatched by other governors under the Emergency Management Assistance Compact (EMAC) or other mutual aid agreements. These joint force headquarters are a top priority and deserve full funding. DoD and the services must provide force structure, equipment, financial support and authority to properly staff these joint billets and functions.

Every state National Guard also has developed rapid reaction forces that provide every state with a trained and ready combat arms force capable of quickly delivering company- and battalion-sized units. These reaction forces can help local and state law enforcement agencies by protecting key sites such as power plants and transportation hubs, establishing roadblocks, and securing Weapons of Mass Destruction incident sites.

The use of mutual assistance compacts and an increasingly strong nationwide resource-sharing alliance provides a robust, redundant, and resilient capability for the Guard to support any state in a Title 32 status. This capability falls within the Stafford Act and Chapter 15 of Title 10, which address the enforcement of laws to restore public order.

**3.3.2 Readiness.** Any assignment of responsibility for enhancing the nation's terrorism consequence management capability should be balanced against the contingency of the National Guard being called to assist active and reserve components in dealing with overseas military operations. While the Army and Air National Guard have aggressively supported the nation's homeland security needs, the Guard's preparedness to perform future or expanded homeland security missions must take into account requirements, readiness standards, facility readiness and other measures that have not yet been defined. We urge the Secretary of Defense to work with the nation's governors in refining the central role of the Guard in future homeland defense and other domestic missions.

**3.3.3 Council of Governors and Policy Development.** Governors strongly support the establishment of the bipartisan Council of Governors (Governors Council) required by Section 1822 of the National Guard Empowerment Act of 2007. The Governors Council will serve to improve coordination between the federal government and states on matters related to the National Guard and military support to civilian authorities, and will be an important tool to address issues such as National Guard equipment, capital facilities, training and readiness; deployment schedules; and coordination between federal and state agencies.

National policy development pertaining to the role of the National Guard should be coordinated through the Governors Council and focus on the following principles:

- All disasters are local. Our constitutional design, a federal republic, provides the legal guidance to respond to domestic disasters and terrorism response at the state level.
- Emergency response resources and personnel are local. Nearly 100 percent of our emergency response equipment and personnel serve at the municipal, county, and state government levels.

## NGA Policy Statement

- Government jurisdiction and authority is local. Since response is local, authority must remain local. A municipal government may be rendered completely ineffective by a disaster, but it is increasingly unlikely that a county or state government would become non-functional.
- In domestic operations, civilian authorities are in charge. Most states have constitutional provisions placing military under civil authority. The President is authorized to use the militia and armed forces to enforce federal authority in extreme cases; however, in the case of Martial Law, it is a state responsibility.
- The National Guard is a state force. Starting with the Dick Act of 1903 and followed by the Defense Act of 1916, the National Guard has become integrated into the wider national Army and Air Force. This provides standardization, uniformity, and funding, but not control. It allows the National Guard to become fully integrated into state and local response plans and eliminates restrictions intended to check federal power, including the Posse Comitatus Act.
- The National Guard, with more than 3,000 community-based facilities, provides an ideal local base of support for military and civil authorities and for supporting citizens in need during domestic emergencies.

### 3.4 Equipment and Training

Governors commend the Army and the Air Force for the efforts being made to enhance training and to better equip the National Guard in recognition of its vital contribution to our national defense. However, the Army National Guard is still seriously underequipped. Many states and territories are experiencing equipment shortages in critical areas such as motorized vehicles, radios and other communications equipment, Army and Air National Guard tactical fixed wing airlift, and Army National Guard utility helicopters. Additionally, governors remain concerned regarding DoD's plans to meet National Guard requirements for a fixed wing aircraft for domestic and overseas tactical airlift operations. The ability of the National Guard to fulfill both domestic and overseas tactical airlift missions is dependent upon adequate numbers of tactical fixed wing cargo aircraft in the National Guard, as well as their strategic positioning at Guard bases throughout the country.

Such equipment shortages heavily impact our readiness for domestic emergencies. Current aviation modernization plans fail to adequately address these shortages, and we urge Congress and the Administration to ensure an increased supply of helicopters for the Army National Guard, and an increased supply of theater fixed wing aircraft for both the Army and Air National Guard. Modernization plans must provide adequate sets of equipment to facilitate prompt and effective Guard response to domestic emergencies.

It is especially critical that Army National Guard units returning from active duty abroad be re-equipped and reconstituted to ensure that they are ready for redeployment or domestic missions.

Governors commend the President and Congress for their strong efforts to fill the National Guard's "Essential Ten Equipment Requirements." These items, identified by the National Guard Bureau as the most critical dual-use items, are needed for each state to maintain some measure of the ten vital capabilities it needs in an emergency, namely, a joint force headquarters with around the clock staffing for command and control; a civil support team for chemical, biological, and radiological detection; engineer assets; logistics; communications; ground transportation; aviation; medical surge capability; security forces; and a baseline maintenance capability. Further, the services must, as possible, simultaneously field the same equipment to Title 10 and National Guard forces to ensure seamless integration of the Guard as it engages in its federal mission.

Governors support continued progress towards budgetary and equipment transparency to ensure Army

## NGA Policy Statement

National Guard units receive equipment for which Congress provides funds.

The shortage of Full-Time Support (FTS) personnel remains a priority for the Army National Guard across the country. Governors commend the President and Congress for the significant increase in Full-Time Support (FTS) personnel. Governors encourage DoD and Congress to include increases to future year Defense authorization and appropriations bills as past gains in congressionally authorized FTS levels are not sufficient to sustain the National Guard or meet federal readiness requirements. The focus of all full-time staff adds should be at the state level and below for the next four years.

A top readiness issue for the Army National Guard is Military Construction. Many of the nation's armories are in need of significant renovation and/or replacement. Our nation has never relied more on its National Guard for homeland defense than it does today and our soldiers deserve modern, efficient facilities in which to train. In addition, these armories are vital centers of gravity for the communities in which they are located, often serving as emergency shelters and field operations centers in time of need.

Governors support annual training exercises of National Guard units. However, the requirements for training and military education should be consistent with the needs of a dual role military force, and with the responsibilities members of the Guard also have to their families, their employers, and their communities. This should be kept in mind when developing the right mix of monthly and annual training exercises for the Guard. Governors recognize that special training may be required of certain units, but this must be the exception and not the rule, and should be undertaken to the maximum extent possible on a voluntary basis.

**3.4.1 State Partnership Program.** Governors recognize the exceptional role that their Guard has in promoting America's interests overseas as reflected by the great successes of the State Partnership Program. DoD should increase the prominence and utilization of this program and expand funding to include military to civilian and civilian to civilian events within the combat commander's theater security cooperation plan.

**3.4.2 Employer Support for the Guard and Reserves.** Governors ask the employers of National Guard men and women to recognize their need to be away during times of training or when activated by the governor or federal authorities. Additionally, governors ask employers to remember the extra sacrifice made by military families before, during and after deployments to provide them the needed support and time to sustain military families.

In addition, governors applaud and encourage commitments by private employers to make up gaps between civilian pay and active-duty pay for Guardsmen and reservists. A number of states are seeking to address this for their employees who are citizen-soldiers and airmen. Governors strongly encourage Congress to join in this effort to enhance federal measures to address pay gaps for activated citizen-soldiers and airmen who leave their jobs to stand in harm's way for our nation and to provide employer benefits to employ National Guard and reserve members.

**3.4.3 Yellow Ribbon Reintegration of Military Service Members and Families.** The states have undertaken dynamic initiatives in creating programs to support military Service Members and their Families during the deployment cycle. Governors also applaud the efforts by Congress and the DoD to provide legislation and funding to implement programs that assist in this process. Governors urge the Administration and Congress to further develop mature Yellow Ribbon Reintegration programs that rely on decentralized delivery and local partnerships to link veterans with local services and capabilities.

Therefore, it is prudent and right to build the relationships with the local providers and agencies as soon

## NGA Policy Statement

as possible. Initiatives such as the Community Based Health Care Offices of the VA and similar efforts by the DoD assist greatly with the successful reintegration of veterans to their local community. Finally, federal departments must share privacy data more effectively with each other and with states to ensure seamless support of service members and veterans while protecting the privacy and security of their personal information.

### 3.5 The National Guard and the Transformation of the U.S. Military

The National Guard has not been immune from post-Cold War force reductions. In fact the National Guard today is at the same force structure level as prior to World War II. The events of September 11, 2001, have caused a broad reevaluation of the entire spectrum of terrorism response and homeland security, including the role of the National Guard. In light of the new threat environment, the current force structure of the Army and Air National Guard must not be reduced; in fact, governors believe consideration should be given to expanding the force structure of the Army and Air National Guard. Furthermore, the Air Force should extend the community-basing effort where active duty airmen are assigned to Air National Guard bases saving the Air Force significant funds and increasing the readiness of both the active duty Air Force and the Air National Guard.

Changes in the national security environment have caused the U.S. Department of Defense to evaluate force structure. Additionally, the sweeping recommendations of the Commission on the National Guard and Reserve (CNGR) prompted an aggressive response from the Secretary of Defense. Governors applaud the Secretary's active approach to addressing these important issues and call on the Secretary for decisive action which preserves the primacy of the states in responding to domestic emergencies and the operational nature of the National Guard. Truly, the National Guard has shown its vitality and validity as a cost effective and mission proven force. DoD plans to address the CNGR recommendations should reflect this fact. Governors look forward to working with the Secretary on these issues through the Governors Council.

The Army and Air National Guard have surpassed their recent recruitment and retention goals. For the Army National Guard in particular, innovative recruiting incentives, such as the Guard Recruiting Assistance Program (GRAP) and the Active First Program have proven invaluable in the contemporary recruiting environment. The nation's governors commend the National Guard Bureau for its efforts to focus command attention on recruitment and for allocating more resources and funding, including more recruiters to assist in the effort.

The nation's governors commend Congress and the Administration for providing coverage under the TriCare standard program to all members of the National Guard regardless of their status.

The Army and Air Force are encouraged to commit to the full preparation of and maximum practical utilization of the National Guard as a dual-missioned force for both domestic and outside the continental United States (OCONUS) peacetime and wartime missions. The Guard's effectiveness in responding to state and federal domestic emergencies is a direct result of its combat, combat support, and combat service support missioning, training, equipping, and deployment experience. The National Guard's strengths are the quality and combined military and civilian training of its people, its unique state and federal ties, its unique dual mission, and its cost-effective manner of maintaining high combat readiness. It is the national insurance policy for domestic and foreign emergencies.

The Army and Air Force also should acknowledge that moving National Guard units to active duty bases can have a significant negative impact on the Guard's recruitment efforts. In particular, moving Air National Guard units from civilian airports to active duty bases does not make sense from a cost savings



## NGA Policy Statement

standpoint since Air Guard units typically operate very inexpensively and provide needed services to civilian airports. Governors urge DoD to avoid closing National Guard facilities and air bases. The current dispersal of National Guard facilities and air bases enhances homeland security capabilities by reducing the ability of terrorists to destroy a significant percentage of homeland defense capability by attacking consolidated operations sites. Additionally, these bases provide governors with multiple locations near population centers that are used for the receipt, staging, and onward integration of people, equipment, and medical supplies during emergencies.

### **3.6 Equal Opportunity in the National Guard**

The National Guard is composed of men and women of all races, colors, creeds, and religions from more than 3,000 communities in the states, territories, and the District of Columbia. The National Guard Bureau has established equal opportunity in the Guard as one of its primary goals, and states are committed to fair and equal access to all positions in the National Guard.

Governors, as commanders-in-chief of the National Guard, fully support equal opportunity in all state programs and institutions under the Guard regardless of race, sex, or religion; endorse the National Guard Bureau's goal; and pledge full support in achieving equal opportunity in all aspects of the Guard.

*Time limited (effective Winter Meeting 2009–Winter Meeting 2011).  
Adopted Annual Meeting 1986; revised Annual Meeting 1990, Winter Meeting 1991, Annual Meeting 1992, Winter Meeting 1994, and Winter Meeting 1995; revised and reaffirmed Winter Meeting 1997; reaffirmed Winter Meeting 1999; revised Winter Meeting 2001, Winter Meeting 2003, Annual Meeting 2003, Winter Meeting 2005, and Winter Meeting 2007; reaffirmed Winter Meeting 2009; revised Annual Meeting 2009 (formerly Policy HR-6 and Policy B-5).*