

- SUBJECT:** National Guard Mutual Assistance Counter-Drug Activities Compact
- COMMITTEE:** State, Federal and International Relations — favorable, without amendment
- VOTE:** 9 ayes — Hunter, Chavez, Isett, Palmer, Pitts, Seaman, West  
0 nays  
2 absent — Moreno, Wise
- WITNESSES:** None
- BACKGROUND :** The Texas National Guard receives funding from the National Guard Bureau of the U.S. Department of Defense to support law enforcement agencies in efforts to reduce the supply of drugs in the United States under 32 USCA §122. The governor is designated as commander of the Texas National Guard and therefore controls the activities of the guard in providing counter-drug support.
- Ten states have adopted the compact and three others, including Texas, are considering adoption in the current legislative session.
- DIGEST:** HB 3380 would adopt the National Guard Mutual Assistance Counter-Drug Activities Compact. The compact would authorize the governor to enter into agreements for mutual assistance and support with other states in regarding counter-drug activities.
- Purposes.** HB 3380 would expressly state that the purposes of the compact would include:
- providing assistance and support among all states entering the compact;
  - permitting the national guard to enter into agreements with law enforcement agencies in the guard's home state or in other states to coordinate drug interdiction, counter-drug activities and drug demand reduction efforts;
  - encouraging a high degree of flexibility in the national guard forces;

- protecting the rights of national guard personnel when performing duties under the compact, and
- ensuring uniformity of state laws relating to national guard involvement in counter-drug activities.

**Agreements.** In order to give or receive mutual assistance to another state, the governor would have to approve the request. The request would have to be specific and would include the following:

- the duration and purpose of the agreement;
- the manner of financing the agreement;
- provisions for administering the agreement;
- minimum insurance requirements, if necessary;
- the powers of the officers and the chain of command, and
- the duties and authorities that the guard personnel can exercise in the other state.

In order for an agreement to be effective, it would have to be approved by the Attorney General's Office. In order to approve the agreement, it would have to meet all requirements of the compact and conform to applicable state laws. If any part were disapproved, the attorney general would be required to state the reasons for disapproval. Agreements not disapproved within 30 days would be considered valid.

**Operations allowed.** The compact would allow the use of the national guard in drug interdiction, counter-drug or demand reduction activities. Such activities could include providing:

- information to federal state or local law enforcement officials relevant to a violation of federal or state law;
- equipment to law enforcement officials;
- personnel to train local law enforcement officers in the use of equipment;
- personnel to operate and maintain equipment provided to law enforcement agencies;

- personnel to perform detection, monitoring and communication of the movement of air, land and sea traffic to provide information to law enforcement agencies;
- administrative or analytic support services, and
- personnel to aid in the prosecution or incarceration of individuals arrested under the criminal justice system for the use, distribution or transportation of controlled substances.

**In-state counter-drug activities.** HB 3380 would authorize the adjutant general to enter into mutual assistance agreements with any law enforcement agency, including federal agencies operating within the state for drug prevention activities. The national guard would provide assistance, personnel and equipment to the extent authorized and funded by Title 32.

**Liability issues.** When an agreement for mutual assistance was adopted, the members of the national guard, when engaged in the performance of their duties, would not be held personally liable for any acts or omissions that occur during the performance of their duties. The compact would not waive any rights available currently under Title 32 or under the Federal Tort Claims Act. Members of the national guard, when operating in another state, would have the same powers, duties, rights, privileges and immunities as members of the national guard of that state.

Generally, the requesting state — the state asking for assistance — would be responsible for all costs and expenses of the responding state — the state providing assistance. The responding state would be liable for any damages or expenses incurred in the operation, including the cost of materials, transportation and maintenance. The requesting state would be required to pay the personnel of the responding state as if they were on duty within their home state, unless the agreement specified a different schedule. Each state would have to provide compensation and death benefits to members of the guard if they were injured while performing duties under the compact. The requesting state would be required to pay all such benefits to the responding state as an expense under the agreement.

Members of the guard would be governed at all times by the code of military justice of their home state. The compact would not prevent any

court from exercising jurisdiction over a member of the guard from another state while performing duties under the compact. If a member of the guard committed or was suspected of committing a criminal act, that member could be immediately returned to his home state but could also face criminal charges in the state the alleged act occurred.

The compact could not be used to allow the state's national guard units to be placed under the operational control of any person not holding the office or rank required by law to exercise such control.

**Applicability and severability.** The compact would become effective as long as two states adopted the compact. Any state could withdraw from the compact, but the withdraw would not be effective until one year after the governor gave notice of such withdraw to the governors of the other states that have adopted the compact.

Any provision of the compact could be severed if found to contradict a federal or state law without nullifying any other provisions of the compact.

**Effective date.** HB 3380 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. The compact would be in force from that date.

NOTES:

HB 101 by Gray would adopt the Emergency Management Assistance Compact providing similar provisions for the exchange of personnel in emergency relief situations. HB 101 passed the House on March 24 and has been reported favorably by the Senate State Affairs Committee.