

House Resolution 4

Sponsored by Representative SHIELDS; Representatives BAILEY, DEMBROW, KAHL, THOMPSON, TOMEI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Urges Governor to withhold deployment of Oregon National Guard to Iraq or Afghanistan.

HOUSE RESOLUTION

1
2 Whereas under section 8, Article I of the United States Constitution, Congress may call forth
3 the militia to "execute the Laws of the Union, suppress Insurrections and repel Invasions"; and

4 Whereas federal law since 1933 has provided that persons enlisting in a state National Guard
5 unit simultaneously enlist in the United States National Guard, a part of the United States Army,
6 and that enlistees retain their status as state National Guard members unless and until ordered to
7 active federal duty and then revert to state National Guard status upon being relieved from federal
8 active duty; and

9 Whereas in 1986, Congress passed and the President of the United States signed the
10 "Montgomery Amendment," which provides that a Governor cannot withhold consent with regard
11 to active duty outside the United States because of any objection to the location, purpose, type or
12 schedule of such duty; and

13 Whereas under the United States Constitution each state's National Guard unit is controlled by
14 the Governor in times of peace, but can be called up for federal active duty by the President, pro-
15 vided that the President is acting pursuant to the Constitution and laws of the United States; and

16 Whereas the War Powers Act of 1973 specifically limits the power of the President to wage war
17 without the approval of Congress; and

18 Whereas in October 2002, Congress approved the Authorization for the Use of Military Force
19 Against Iraq Resolution of 2002 in response to the President's request under the War Powers Act;
20 and

21 Whereas the 2002 resolution authorized the President to use the Armed Forces of the United
22 States as he determines necessary and appropriate to defend the United States against a continuing
23 threat posed by Iraq and to enforce all relevant United Nations Security Council resolutions re-
24 garding Iraq; and

25 Whereas the earlier congressional Authorization for Use of Military Force of September 18,
26 2001, which launched the "War on Terror," has allowed the United States to occupy Iraq, conduct
27 military operations in Afghanistan and attack targets in Somalia, Pakistan and elsewhere; and

28 Whereas the 2001 congressional authorization resulted in the opening of the Guantanamo Bay
29 prison camp, the use of undisclosed military holding sites in other parts of the world, the enactment
30 of the USA PATRIOT Act and the use of military tribunals among other affronts to human, civil and
31 constitutional rights; and

32 Whereas if the intent of the 2002 congressional resolution was to enforce all current and future

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 United Nations Security Council resolutions regarding Iraq, then the 2002 congressional resolution
2 is too broad and could allow the National Guard to remain federalized indefinitely; and

3 Whereas the 2001 congressional resolution also is overly broad and could be construed to allow
4 the President to call up the National Guard again to go to Iraq, Afghanistan or any other country
5 deemed part of the “War on Terror”; and

6 Whereas the 2001 and 2002 congressional resolutions contain neither a termination date nor a
7 process or procedure for determining when the authorization should terminate; and

8 Whereas the United States Armed Forces, including members of the Oregon National Guard and
9 National Guard members from other states, have long since addressed the purposes set forth in the
10 2002 congressional resolution; and

11 Whereas Iraq does not pose a continuing threat to the national security of the United States
12 and there is no extant United Nations Security Council resolution to be implemented for a contin-
13 uing threat; and

14 Whereas the President may not maintain the use of United States Armed Forces, and in partic-
15 ular members of the Oregon National Guard, in Iraq for purposes other than those set forth by
16 Congress in the 2001 and 2002 congressional resolutions; and

17 Whereas without a specific date for withdrawal of United States Armed Forces or a method or
18 formula for determining a time for withdrawal in the 2001 and 2002 congressional resolutions, and
19 in the absence of federal legislation curing these omissions, the President is required to order the
20 withdrawal of troops within a reasonable time and in a reasonable manner, but the President has
21 taken no such action; and

22 Whereas other than the 2001 and 2002 congressional resolutions, there is no authority under the
23 Constitution or the laws of the United States for the continued presence of Oregon National Guard
24 members in Iraq and Afghanistan; and

25 Whereas the deployment of Oregon National Guard members in Iraq and Afghanistan beyond the
26 scope set forth in either congressional resolution has resulted, and continues to result, in deaths,
27 injuries and significant harm to Oregon National Guard members and their families as well as loss
28 of time together and financial hardship; now, therefore,

29 **Be It Resolved by the House of Representatives of the State of Oregon:**

30 That we, the members of the House of Representatives of the Seventy-fifth Legislative Assembly,
31 urge the Governor to withhold deployment of the Oregon National Guard to Iraq or Afghanistan.

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