

## HB 4091 issues to consider for public testimony.

### 1. Legal Conflicts with Federal Law

The bill attempts to assert state control over the National Guard in ways that directly challenge established federal supremacy and constitutional frameworks.

- **Supremacy Clause (U.S. Constitution, Art. VI, Cl. 2):** Federal law (Title 10 and Title 32) governs the National Guard's role as a reserve component of the U.S. Armed Forces. Under the Supremacy Clause, state laws cannot override or obstruct the execution of federal laws. By prohibiting the Adjutant General from "facilitating, assisting or coordinating" certain federal mobilizations, the bill directly interferes with the federal government's ability to utilize its military forces.
- **The "Militia Clauses" (U.S. Constitution, Art. I, Sec. 8):** The Constitution grants Congress the power 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." HB 4091's restriction on mobilizations—particularly for "law enforcement" or "immigration" duties—attempts to carve out state-level exceptions to a power explicitly granted to the federal government.
- **Perpich v. Department of Defense (1990):** The U.S. Supreme Court ruled unanimously in this case that the federal government can deploy National Guard units for training or active duty without a governor's consent, even if those units are needed at home. HB 4091's provision allowing the Governor to block a mobilization if it makes the Guard "incapable of responding to a statewide emergency" appears to be a direct legislative attempt to circumvent this Supreme Court precedent (the "Montgomery Amendment").
- **Commerce Clause and Interstate Relations:** The bill prohibits the "militia or armed forces of another state" from entering Oregon without the Governor's consent. This may conflict with federal laws governing the **Emergency Management Assistance Compact (EMAC)** and federal authority to move military assets across state lines during national emergencies or for federalized Title 10 missions.

### 2. Practical Implementation Issues

Beyond the legal hurdles, the bill creates significant operational and administrative friction.

- **Funding and Federal Recognition:** The National Guard is almost entirely funded by the federal government. In the current biennium, 2025-2027, the State budget for the Oregon Military Department is approximately \$53 Million. In the same two-year period, federal funds provided to the Oregon National Guard are

approximately \$1.2 Billion. If the Oregon Adjutant General (a federally recognized officer) refuses to facilitate a federal order based on state law, the Department of Defense could withdraw federal recognition and funding from the Oregon National Guard. This would effectively dismantle the state's primary emergency response force.

- **Dual-Status Command Conflict:** The Adjutant General (AG) holds a dual role as both a state official and a federal officer. HB 4091 places the AG in an impossible position: following state law would constitute "insubordination" or "failure to obey a lawful order" under the **Uniform Code of Military Justice (UCMJ)**, while following federal orders would violate the proposed Oregon statute.
- **"Immigration Enforcement" Ambiguity:** The bill excludes "support, logistics or surveillance" for border security from its definition of prohibited "immigration enforcement." In practice, these roles often overlap. This creates a "gray zone" where legal counsel would have to vet every single federal order, leading to delays during time-sensitive mobilizations.
- **Emergency Response Capability Assessments:** The bill prohibits the Governor from allowing a mobilization if it leaves the state "incapable of responding to a statewide emergency." There is no objective metric defined for "incapable." This would likely lead to political or legal battles over what constitutes a "sufficient" remaining force during a wildfire, earthquake (Cascadia Subduction Zone), or civil unrest. There are scenarios where it may be advantageous for all Oregon National Guard service members to be mobilized in a federal status such as in a full mobilization in response to an attack on the homeland of the United States. This bill restricts the governor's authority to allow such a mobilization even if they agree with and support it.
- **Mutual Aid Complications:** By requiring explicit Governor consent for other states' Guard units to enter Oregon, the bill adds a layer of bureaucracy to interstate mutual aid. In a fast-moving disaster where Oregon might need immediate help from Washington or Idaho, this requirement could delay life-saving deployments. It adds the same layer of bureaucracy to simple training exercises conducted by surrounding states' National Guard on Oregon Training Centers.