

S.B. NO. 37

By Brownlee

A BILL  
TO BE ENTITLED

AN ACT to create a Texas Defense Guard in the State of Texas during such time as any part of the National Guard is in active Federal Service, and to provide for the organization, maintenance, training and discipline thereof, and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Authority and Name. Whenever any part of the National Guard of this State is in active Federal service, the Governor is hereby authorized to organize and maintain within this State during such period, under such regulations as the Secretary of War of the United States may prescribe for discipline in training, such military forces as the Governor may deem necessary to defend this State. Such forces shall be composed of officers commissioned or assigned, and such able-bodied male citizens of the State as shall volunteer for service therein, supplemented, if necessary, by men of the reserve militia enrolled by draft or otherwise as provided by law. Such forces shall be additional to and distinct from the National Guard and shall be known as the Texas Defense Guard.

SECTION 2. Organization: Rules and Regulations. The Governor is hereby authorized to prescribe rules and regulations not inconsistent with the provisions of this act governing the enlistment, organization, administration, uniforms, equipment, maintenance, training and discipline of such forces; Provided, such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law governing and pertaining to the National Guard and the rules and regulations promulgated thereunder.

SECTION 3. Pay and Allowances. Service in the TEXAS DEFENSE GUARD shall be without pay except when called to active State service by appropriate authorities; such pay and allowances to be computed as for similar grade and service in the National Guard on such duty except that allowances will not include pay for length of service known as, longevity pay, nor rental and subsistence allowances for officers.

SECTION 4. Requisitions: Armories: Other Buildings. For the use of such forces, the Governor is hereby authorized to requisition from the Secretary of War such arms and equipment as may be in possession of and can

be spared by the War Department; and to make available to such forces the facilities of State armories and their equipment and such other state premises and property as may be available. Authorization is hereby provided for school authorities to permit the use of school buildings by the Texas Defense Guard; provided further that County Commissioners Courts, city authorities, communities, civic and patriotic organizations are empowered and authorized by this Act to provide funds, armories, equipment, material, transportation, or other appropriate services or facilities, to the Texas Defense Guard.

**SECTION 5. Use without this State.** Such forces shall not be required to serve outside the boundaries of this state except:

(a) Upon the request of the Governor of another State, the Governor of this State may, in his discretion, order any portion or all of such forces to assist the military or police forces of such other State who are actually engaged in defending such other State. Such forces may be recalled by the Governor at his discretion.

(b) Any organization, unit or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; Provided, such other State shall have given authority by law for such pursuit by such forces of this State. Any such person who shall be apprehended or captured in such other state by an organization, unit or detachment of the forces of this State shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver by this State of its right to extradite or prosecute such person for any crime committed in this State.

**SECTION 6. Permission to forces of Other States.** Any military forces or organization, unit or detachment thereof, of another State who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces may continue such pursuit into this State until the military or police forces of this state or the forces of the United States have had a reasonable opportunity

to take up the pursuit or to apprehend or capture such persons and are hereby authorized to arrest or capture such persons within this State while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other State while in this State shall without unnecessary delay be surrendered to the military or police forces of this State to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this State which would otherwise be lawful.

**SECTION 7. Federal Service.** Nothing in this act shall be construed as authorizing such forces, or any part thereof to be called, ordered or in any manner drafted, as such into the military service of the United States, but no person shall by reason of his enlistment or commission in any such forces be exempted from military service under any law of the United States.

**SECTION 8. Civil Groups.** No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

**SECTION 9. Disqualifications.** No person shall be commissioned or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any military or naval organization of this State, or of another State, or of the United States.

**SECTION 10. Oath of Officers.** The oath to be taken by officers commissioned in the Texas Defense Guard shall be substantially in the form prescribed for officers of the National Guard, substituting the words "TEXAS DEFENSE GUARD" where necessary.

**SECTION 11. Enlisted Men.** Persons shall be enlisted for three years, or until all troops of the Texas National Guards shall have been relieved from active Federal Service, whichever period is less. The oath to be taken upon enlistment in the Texas Defense Guard shall be substantially in the form prescribed for enlisted men of the National Guard, substituting the words "Texas Defense Guard" where necessary.

**SECTION 12. Articles of War; Freedom from Arrest; Jury Duty.** (a) Whenever such forces or any part thereof shall be ordered out for active service the Articles of War of the United States applicable to members of the National Guard of this State in relation to courts martial, their jurisdiction and

the limits of punishment and the rules and regulations prescribed thereunder shall be in full force and effect with respect to the Texas Defense Guard.

(b) No officer or enlisted man of the Texas Defense Guard shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he is ordered to attend for military duty. Every officer and enlisted man of such forces shall, during his service therein, be exempt from service upon any posse comitatus and from jury duty.

SECTION 13. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 14. Repeal. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SECTION 15. Short Title. This act may be cited as the Texas Defense Guard Act 1941.

SECTION 16. Time of Taking Effect. The fact that the regularly constituted National Guard of the State of Texas is now in active Federal Service by Presidential Order, and the State is without adequate organized troops that may be used for the prevention of civil disturbances, riots, sabotage, and other forms of disturbances; and further that the National Defense Act has been amended by Congress authorizing the creation of Defense Guards in the various states, and the Secretary of War is issuing necessary regulations pertaining thereto, and the further fact that without this Act, the State of Texas is unable to secure arms, equipment and other items of government property for Defense Guard without the passage of this enabling legislation, creates an emergency and an imperative public necessity which requires that the constitutional rule requiring bills to be read on three several days in each House be suspended, and that this Act shall take effect and be in force from, and after its passage, and said rule is hereby suspended, and it is so enacted.

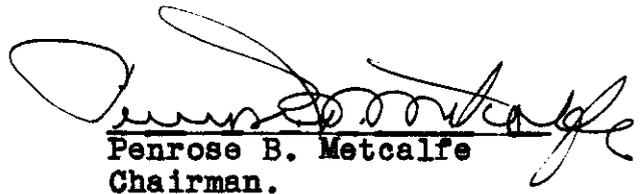
Committee Room,  
Austin, Texas,  
January 22, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: We, your Committee on Military Affairs,  
to whom was referred

S. B. No. 37, A bill to be entitled

"An Act to create a Texas Defense Guard in the  
State of Texas during such time as any part of the  
National Guard is in active Federal Service, and  
to provide for the organization, maintenance, train-  
ing, and discipline thereof, and declaring an  
emergency" have had the same under consideration  
and I am instructed to report it back to the Senate  
with the recommendation that it do pass and be  
printed.

  
Penrose B. Metcalfe  
Chairman.

S.B. NO.

37

BY

Brownlee

▲ BILL

TO BE ENTITLED

AN ACT to create a Texas Defense Guard in the State of Texas during such time as any part of the National Guard is in active Federal Service, and to provide for the organization, maintenance, training, and discipline thereof, and declaring an emergency.

JAN 21 1941

Read first time

and referred to Committee

on

Military Affairs

JAN 22 1941

Reported Favorably

FEB 10 1941

Laid on table

Submitted by the Governor  
as Emergency matter