

A BILL  
To Be Entitled

*By - Sharpe -  
Hutchinson  
D. Hughes  
G. H. Homan  
Bridgeway*

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 <sup>State</sup> 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, <sup>and</sup> 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 any other State by an organization, unit or detachment of the forces of this State shall without un-

necessary 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 <sup>(3)</sup> years, or until all troops of the Texas National Guard 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, create 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

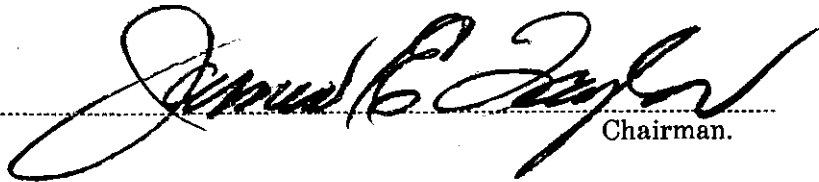
Date Jan. 29, 1941

Hon. Homer Leonard,  
Speaker of the House of Representatives.

Sir:

We, your Committee on Military Affairs, to whom was referred 17 B. No. 45, have had the same under consideration and beg to report back with recommendation that it <sup>do</sup> ~~do not~~ pass, and be not printed.

~~Committee amendments were adopted as substitutes to be printed in lieu of the original bill.~~

  
Chairman.

JAN 30 1941

Amend the caption of H. R. 45  
to conform to the amendments to the body of  
the Bill.

ADOPTED

J. P. [Signature]  
Chief Clerk  
House of Representatives

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; to provide for the organization, maintenance, training, and discipline thereof and rules and regulations necessary thereto; (7) providing a saving clause; repealing all Acts or parts of Acts inconsistent therewith; providing a title for the Act; 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.

Sec. 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, in so far as he deems practicable



and desirable, shall conform to existing law governing and per-  
taining to the National Guard and the rules and regulations pro-  
mulgated thereunder.

Sec. 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 sub-  
sistence allowances for officers.

Sec. 4. Requisitions. Armories. Other Buildings. For the  
use of such forces, the Governor is hereby authorized to requis-  
ition 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, and civic and patriotic organiza-  
tions are empowered and authorized by this Act to provide funds,  
armories, equipment, material, transportation, or other appro-  
priate services or facilities, to the Texas Defense Guard.

Sec. 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 any 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.\_\_\_\_\_

Sec. 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.\_\_\_\_\_

Sec. 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.\_\_\_\_\_

Sec. 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.\_\_\_\_\_

Sec. 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.\_\_\_\_\_

Sec. 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.

①  
omit

Sec. 11. Enlisted Men. Persons shall be enlisted for three (3) years, or until all troops of the Texas National Guard 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.

Sec. 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.

Sec. 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.\_\_\_\_\_

Sec. 14. Repeal. All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed.\_\_\_\_\_

Sec. 15. Short Title. This Act may be cited as the Texas Defense Guard Act, 1941.\_\_\_\_\_

Sec. 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, create 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  
February 3, 1941

Hon. Coke R. Stevenson  
President of the Senate

Sir:

We, your Committee on  
Military Affairs, to whom was referred House  
Bill No. 45, same being

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 de-  
claring 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 as amended and  
be not printed.

FEB 5 - 1941

Milcolfe  
CHAIRMAN

ADOPTED:

Ray Barker  
Secretary of the Senate

AMEND House Bill No. 45.

Amend Section 11 by striking out the entire Section as written, and substituting therefor the following:

Section 11. Enlisted Men. Persons shall be enlisted for three <sup>(3)</sup> years unless sooner demobilized or discharged by authority of the Governor. 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. It shall be the duty of the Governor to disband or demobilize units of the Texas Defense Guard and the Officers thereof, ratably and progressively upon the release of the Texas National Guard units from active Federal service and return to their home stations, provided that the Governor shall in his judgment accomplish the disbanding and demobilization of Texas Defense Guard units in conjunction with the return of the National Guard units so as to preserve in any locality or area of the State or in the State as a whole, proper defense of such areas; and provided further that upon the return of all of the Texas National Guard units to home station, all or any remaining units of the Texas Defense Guard will be disbanded or demobilized in accordance with the provisions of Section 61 of the National Defense Act as amended and approved by the President, October 21, 1940.\*

*Amend Caption to Conform*

ADOPTED: FEB 5 - 1941

*Bob Baker*  
Secretary of the Senate

JAN 29 1941

..... READ SECOND

TIME..... AND

ORDERED..... ENCROSSED

*by viva voce vote.*

JAN 29 1941

..... Constitutional  
Rule requiring bills to be read on  
three several days suspended by  
A four-fifths vote.  
Yeas 143 Nays 0

*Jan. 27, 1941*

READ 1ST TIME  
AND REFERRED TO COMMITTEE ON

*Military Affairs*

JAN 29 1941

..... and Passed

..... and Passed

by following vote yeas 136

nays 0

*E. H. Lindberg*  
CLERK

JAN 29 1941 REPORTED FAVORABLY.

JAN 29 1941 ORDERED NOT PRINTED.

JAN 29 1941 SENT TO SPEAKER.

JAN 29 1941 SENT TO ENGROSSING CLERK.

JAN 29 1941

*all necessary House Rules  
suspended to take up and  
place on second reading H.B. 45  
by  
to lie over one day  
viva voce vote.*



*Enrolled February 6, 1941*

By: Sharpe, et al

H. B. No. 45

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.

1-27-41 Read 1st time and referred to Committee on Military Affairs.

1-29-41 Reported favorably.

1-29-41 Ordered not printed.

1-29-41 Sent to Speaker.

1-29-41 All necessary House Rules suspended to take up and place on second reading H. B. 45 by viva voce vote.

1-29-41 Read second time and ordered engrossed by viva voce vote.

1-29-41 Constitutional Rule requiring bills to be read on three several days suspended by a four-fifths vote. Yeas 143, Nays 0.

1-29-41 Read third time and passed by following vote: Yeas 136, Nays 0.

E. R. Lindley  
Chief Clerk, H. of R.

1-29-41 Sent to Engrossing Clerk.

1-29-41 Engrossed.

*Alice Kellman*  
Engrossing Clerk, H. of R.

JAN 30 1941 RETURNED FROM ENGROSSING CLERK.

JAN 30 1941 SENT TO SENATE

FEB 5 1941

FEB 5 1941

SENT TO HOUSE

FEB 6 1941

*no amended*  
Returned from the Senate

FEB 5 1941  
READ THIRD TIME AND PASSED  
BY THE FOLLOWING VOTE:  
Yeas 30  
Nays 0  
*W. J. Carter*  
Secretary of the Senate

FEB 5 1941  
Constitutional Rule suspended by four-fifths vote  
Yeas 30  
Nays 0

*Amended and passed to third reading.*

*Read Second time following report*

FEB 5 1941

Constitutional rule suspended by 4/5 vote for consideration by Committee and Senate

FEB 5

*Printed*

*Reported favorably with amendments to be read*

FEB 3 1941

*on Military Affairs*

and referred to Committee

Read first time

JAN 30 1941  
the House.

Received from

JAN 30 1941

IN THE SENATE

FEB 6 1941 SENT TO SPEAKER

FEB 6 1941 The House has  
concurred in Senate amendments to  
House Bill No. 45 by a vote  
of 130 Yeas 4 Noes.

FEB 6 1941 SENT TO ENROLLING CLERK