Rep. Michael Fisher admits he’s no fan of the war in Iraq. But he’s adamant that’s not the reason he filed a bill in the Vermont House of Representatives to bring all the state’s National Guardsmen home.

Instead, Fisher said his bill lays out a narrow legal argument as to why President Bush no longer has the authority to federalize National Guard troops for the war in Iraq.

And along with questioning the federal government’s authority to federalize Guard and Reserve forces, state legislators like Fischer also believe the absence of the reserve troops—many of which are stationed in Iraq and overseas—is leaving a void at home. That void is hampering some states’ emergency response readiness and the Guards’ equipment and recruitment suffer, they believe.

In 2002, “Congress laid out a pretty specific mission: To defend the national security of the U.S. against the continuing threat posed by Iraq and to enforce UN Security Council resolutions,” Fisher said.

But since the two aspects of the original mission no longer exist, some argue, Fisher said it’s time for the National Guard to come home. He based his bill on the Constitution and the War Powers Act of 1973, which stipulates the relationship between Congress and the president for the authorization to use military force.

“There is no credible argument that Iraq poses a risk,” Fisher said. “(The members of Congress) were specific. They didn’t say the president has the authority to mobilize our Guard permanently. The War Powers Act and the Constitution doesn’t allow it.”

And, according to a report from the independent Commission on the National Guard and Reserves, it goes against the Guard’s primary mission of domestic service. The report, released in late January, determined that mission has been eroded by the near-constant use of the Guard for wars in Iraq and Afghanistan.

In fact, one of 95 recommendations the commission makes in its report is for Congress to amend the partial mobilization statute to clarify congressional intent regarding how long troops will be required to serve in active duty.

Fisher’s bill—it’s also being introduced in other states—is one of a
number of recent actions to highlight the simmering dispute between states and the federal government over National Guard issues.

**Governors Regain Some Control**

One major issue was Congress’s 2006 approval of the so-called “Insurrection Act Rider,” which made it easier for the president to take control of the National Guard from governors and to use the U.S. military for domestic law enforcement. That action brought criticism from governors and legislators alike.

“States tend to be the first responders in a natural disaster,” said Massachusetts Sen. Richard Moore. “Much of what happens, even on a terrorist issue, starts somewhere locally, as well as the need to be able to control the Guard for other kinds of public emergencies. It’s important they report to the state administration.”

The National Governors Association said in support of the 2006 Defense Authorization Bill that a repeal of the 2006 rider “will ensure that the authority for responding to disasters and local emergencies, along with managing the Guard within a state, remains with the governor.”

Bush signed that 2008 defense bill, which includes repeal of the Insurrection Act Rider, in late January.

The Commission on the National Guard and Reserves went even further in its recommendations. While acknowledging the role that all levels of government—local, state and federal—play in protecting the homeland, the commission recommended the National Guard and Reserves have the lead role in Department of Defense operations in the homeland.

“State and local governments are the nation’s first line of defense,” the report said. “Their first responders, the National Guard, and other state and local officials often represent the bulk of the capabilities responding to a disaster.” In addition, the report cites governors as vested with the responsibility to protect the lives and properties of their state’s residents.

The commission also recommends the Defense Department develop protocols that allow governors to direct the efforts of federal military assets responding to an emergency such as a natural disaster.

“The homeland threat is real,” retired Marine Maj. Gen. Arnold L. Punaro, the commission chairman, said in releasing the report Jan. 31 at the National Press Club. “The Guard and Reserve has a significant operational advantage because they’re located in 3,000 communities across the country.”

**War Impacts States’ Ability to Protect Homeland**

Continued use of the Guard in Iraq and Afghanistan has created many problems for states. Not only have Guard personnel been unavailable to help in times of domestic crisis—such as Hurricane Katrina in Louisiana and Mississippi and the May 2007 tornadoes in Kansas—states have lost numerous pieces of equipment, which are being used overseas. In addition, the readiness of personnel to deal with homeland defense has deteriorated.

“We think there is an appalling gap in readiness for homeland defense, because it will be the Guard and Reserve that have to respond to those things,” Punaro told The Washington Post.

The commission report acknowledges the traditional strategic role of the National Guard and Reserves has shifted to an operational role with the wars in Iraq and Afghanistan. The commission said there is no reasonable alternative for the shift. It recommends creating an operational force using portions of the National Guard and Reserves, and changing the laws for funding and training them.

“Because the nation has not adequately resourced its forces designated for response to weapons of mass destruction, it does not have sufficient trained, ready forces available,” the report said. “This is an appalling gap that places the nation and its citizens at risk.”

**Guard Recruitment, Equipment Suffer**

Part of the problem, according to Moore of Massachusetts, is the continued use of the Guard and Reserve in active duty mission has made it more difficult to recruit new Guardsmen and Reservists.

“The federal government, by the heavy utilization of the National Guard in the last five years with Iraq and Afghanistan, has sapped states of recruitment opportuni ties because members haven’t been signing up,” Moore, of Massachusetts, said. “People do it as a part-time position. They don’t expect to be used as full-time soldiers for years on end.”

The report also addresses the lack of up-to-date equipment for the Guard and Reserves. It found a $48 billion unfunded shortfall for reserve component equipment at the beginning of 2007. “The high operational use of Reserve equipment in the current conflicts has degraded their readiness for both combat operations and domestic emergency response,” the report found.

Although the lack of equipment for Guard members to perform their domestic duties has hindered states’ ability to respond to emergencies, state governments aren’t likely to replace equipment, according to Moore of Massachusetts.

“Unless the federal government provides additional funding for rebuilding the Guard, the states aren’t going to buy the equipment and have the potential for it to be taken away from us,” Moore said.

The commission recommended Congress require budgeting and planning efforts include the equipment requirements for all branches of the armed services; and suggested the services use the commission report to prioritize funding to restore equipment readiness for current and future operations.

The commission expects a quick turn-around on its recommendations. Some recommendations from an interim report released last March have already been incorporated into the 2008 Defense Authorization Act, which was signed in January.

The commission asked in the January report for a cost analysis of the recommended changes for the National Guard and Reserves by the Congressional Budget Office.

While the changes are expected to be costly, Punaro believes they are necessary. “Right now we don’t have the forces we need, we don’t have them trained, we don’t have the equipment,” Punaro, the commission chairman, told The Associated Press.

“Even though there is a lot going on in this area, we need to do a lot more. ... There’s a lot of things in the pipeline, but in the world we live in—you’re either ready or you’re not.”

—Mary Branham Dusenberry is the managing editor for State News magazine.