

Representative Daniel McCay proposes the following substitute bill:

1 **CONCURRENT RESOLUTION ON THE NATIONAL DEFENSE**

2 **AUTHORIZATION ACT**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd Weiler**

6 House Sponsor: Daniel McCay

8 **LONG TITLE**

9 **General Description:**

10 This concurrent resolution of the Legislature and the Governor expresses strong
11 disapproval of portions of the National Defense Authorization Act for Fiscal Year
12 2012.

13 **Highlighted Provisions:**

14 This resolution:

- 15 ▶ expresses disapproval of Sections 1021 and 1022 of the National Defense
16 Authorization Act for Fiscal Year 2012, which authorizes:
- 17 • military detention without trial for suspected terrorists; and
 - 18 • trial by military commission or transfer to a foreign country of persons detained;
- 19 and
- 20 ▶ urges Congress to repeal or clarify Sections 1021 and 1022 of the National Defense
21 Authorization Act for Fiscal Year 2012.

22 **Special Clauses:**

23 None

25 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*



26 WHEREAS, the Congress of the United States passed the National Defense
27 Authorization Act for Fiscal Year 2012 ("2012 NDAA") on December 15, 2011;

28 WHEREAS, the President of the United States of America signed the 2012 NDAA into
29 law on December 31, 2011;

30 WHEREAS, Section 1021 of the 2012 NDAA affirms the authority of the Armed
31 Forces of the United States to detain covered persons pending disposition under the law of war
32 and defines covered persons to include persons associated with the attacks on September 11,
33 2001 or members and supporters of al-Qaeda, the Taliban, or other associated forces that are
34 engaged in hostilities against the United States;

35 WHEREAS, Section 1021 of the 2012 NDAA states that disposition under the law of
36 war includes detention without trial until the end of hostilities, trial by military commission,
37 and transfer to the custody of the person's country of origin or any other foreign country or
38 entity;

39 WHEREAS, Section 1022 of the 2012 NDAA requires that members of al-Qaeda
40 captured in the course of hostilities be detained in military custody pending disposition under
41 the laws of war, except that it is not a requirement to detain a citizen of the United States or
42 lawful resident alien of the United States on the basis of conduct taking place within the United
43 States;

44 WHEREAS, there is uncertainty whether Sections 1021 and 1022 could be used to
45 authorize indefinite military detention of United States citizens, legal permanent residents, and
46 others without charge or trial within the United States;

47 WHEREAS, Section 1021 could be used to allow the President to determine whether or
48 not a trial, and what type of trial, will be held for those arrested under the authority of the 2012
49 NDAA;

50 WHEREAS, the indefinite military detention of any person in the United States without
51 charge or trial violates the right to be free from deprivation of life, liberty, or property without
52 due process of law guaranteed by the United States Constitution, Amendment V and Utah
53 Constitution, Article I, Section 14;

54 WHEREAS, the indefinite military detention of any person within the United States
55 without trial violates the right to a speedy trial by an impartial jury guaranteed by the United
56 States Constitution, Amendment V and Utah Constitution, Article I, Section 12; and

57 WHEREAS, it is indisputable that the threat of terrorism is real and that the full force
58 of appropriate and constitutional law must be used to defeat this threat; however, winning the
59 war against terror cannot come at the great expense of mitigating basic, fundamental,
60 constitutional rights:

61 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the State of Utah, the
62 Governor concurring therein, expresses strong disapproval of an interpretation and application
63 of Section 1021 or 1022 of the 2012 NDAA that violates a right guaranteed by the United
64 States Constitution and the Utah Constitution.

65 BE IT FURTHER RESOLVED that the Legislature of the State of Utah, the Governor
66 concurring therein, urges the United States Congress to repeal or clarify Sections 1021 and
67 1022 of the 2012 NDAA to protect the rights guaranteed by the United States Constitution and
68 the Utah Constitution.

69 BE IT FURTHER RESOLVED that a copy of this resolution should be sent to the
70 Majority Leader of the United States Senate, the Speaker of the United States House of
71 Representatives, and to the members of Utah's congressional delegation.