STATE OF ARIZONA

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March 9, 2006

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Re: House Bill 2701: national guard mobilization; border; appropriation

Dear Speaker Weiers:

Today I vetoed House Bill 2701, related to legislative efforts to mandate national guard mobilization along the border.

As I have made clear in my State of the State address and in the budget I sent you in January, I believe that until the federal government lives up to its border control responsibilities, Arizona will have to spend significant additional resources to address illegal immigration and its consequences. My budget -- which you have failed to act upon -- calls for $100 million for this important purpose. I also fully support the concept of deploying additional Arizona National Guard to help along the border. Indeed, our Guard has been assisting at the border since 1988, and yesterday I issued an Executive Order calling for further Guard deployments to assist at the border. The Adjutant General has already begun the call up process to enable the Guard to comply with this order, but the size and duration of such efforts will be contingent upon receiving federal or state funding.

Although House Bill 2701 contained such funding, I vetoed it because, as I made clear to the bill's sponsor, it contains a blatantly unconstitutional provision calling for automatic Guard mobilization any time a governor declares an emergency along the border. Like the federal Constitution (which declares the President to be commander-in-chief of the armed forces), the Arizona Constitution makes clear that:

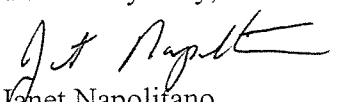
> The governor shall be commander-in-chief of the military forces of the state, except when such forces shall be called into the service of the United States.

Ariz. Const. art. V, § 3. The legislature has no constitutional or other authority to control when or how the Guard is deployed, and the legislature's effort to do so in section one of this bill is an obvious violation of the separation of powers doctrine, and therefore of the Constitution.

House Bill 2701's requirement that the National Guard be mobilized for every state of emergency that exists as a result of unauthorized border crossings is also an unwise restriction on me or any future governor. There may be future such emergencies, for example, where DPS or other law enforcement could offer a more cost-effective response, and it is not good policy to limit a governor's options as this bill does.

I am especially disappointed that this bill's sponsor declined to amend the bill to fix this infirmity and present it to me in a form I could sign. It is time to stop playing political games and get serious about our border. Send me a clean bill that provides sufficient resources to enable more of our Guard to deploy to the border in a manner that respects the constitutional role of the commander-in-chief, and I will promptly sign it.

Yours very truly,



Janet Napolitano
Governor

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cc: Hon. Ken Bennett
Hon. John Allen