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HOUSE BILL 593

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO LAW ENFORCEMENT; ESTABLISHING THE SPECIAL INVESTIGATIONS SECTION WITHIN THE NEW MEXICO STATE POLICE DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY; AMENDING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 9-19-4 NMSA 1978 (being Laws 1987, Chapter 254, Section 4, as amended) is amended to read:

"9-19-4. DEPARTMENT ESTABLISHED. --There is created in the executive branch the "department of public safety". The department shall be a cabinet department and shall consist of, but not be limited to, [five] four program divisions and one administrative division, as follows:

- A. the New Mexico state police division;**
- [B. ~~the special investigations division;~~**

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1 ~~C.~~ B. the training and recruiting division;
2 ~~D.~~ C. the technical and emergency support
3 division;
4 ~~E.~~ D. the administrative services division; and
5 ~~F.~~ E. the motor transportation division. "

6 Section 2. Section 9-19-7 NMSA 1978 (being Laws 1987,
7 Chapter 254, Section 7, as amended) is amended to read:

8 "9-19-7. ORGANIZATIONAL UNITS OF DEPARTMENT-- POWERS AND
9 DUTIES SPECIFIED BY LAW-- ACCESS TO INFORMATION. --

10 A. The organizational units of the department and
11 the officers of those units specified by law shall have all
12 the powers and duties enumerated in the specific laws
13 involved. However, the carrying out of those powers and
14 duties shall be subject to the direction and supervision of
15 the secretary, who shall retain the final decision-making
16 authority and responsibility for the administration of any
17 such laws as provided in Subsection B of Section 9-19-6 NMSA
18 1978. The department shall have access to all records, data
19 and information of other state departments, agencies and
20 institutions, including its own organizational units, not
21 specifically held confidential by law.

22 B. The New Mexico state police division shall
23 consist of the commissioned officers and civilian personnel,
24 including all communications equipment operators, of the New
25 Mexico state police uniform division, ~~and~~ the commissioned

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1 officers and civilian personnel of the New Mexico state police
2 criminal division, the special investigations section and such
3 other personnel as may be assigned by the secretary or by the
4 governor pursuant to an executive order as authorized in the
5 Department of Public Safety Act. The twenty-nine commissioned
6 personnel of the special investigations division of the
7 department of public safety shall become commissioned agents
8 of the special investigations section of the state police
9 division of the department of public safety, upon successful
10 completion of the appropriate course of study, as authorized
11 by the secretary of public safety. The twenty-nine
12 commissioned personnel shall be in addition to the authorized
13 strength of the state police division, which shall expand
14 accordingly. The nine civilian employees of the special
15 investigations division of the department of public safety
16 shall become civilian employees of the special investigations
17 section of the state police division of the department of
18 public safety.

19 ~~[C.—The special investigations division shall~~
20 ~~consist of the staff of the governor's organized crime~~
21 ~~prevention commission, the enforcement personnel of the~~
22 ~~department of alcoholic beverage control and such other~~
23 ~~personnel as may be assigned by the secretary or by the~~
24 ~~governor pursuant to an executive order as authorized in the~~
25 ~~Department of Public Safety Act.—The division is responsible~~

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1 ~~for the enforcement of the Bingo and Raffle Act and the Liquor~~
2 ~~Control Act.~~

3 ~~D.]~~ C. The technical and emergency support
4 division shall consist of the emergency planning and
5 coordination bureau of the department [~~of public safety~~], the
6 personnel of the hazardous materials emergency response
7 program or plan and such other functions as communications,
8 crime laboratory and records.

9 ~~E.]~~ D. The training and recruiting division shall
10 consist of the personnel of the New Mexico law enforcement
11 academy, the New Mexico state police training division and all
12 other training personnel and functions of the department as
13 the secretary may transfer to this division.

14 ~~F.]~~ E. The administrative services division shall
15 consist of the administrative services and services divisions
16 of the New Mexico state police and those administrative
17 support personnel of the other existing departments, divisions
18 or offices as the secretary deems necessary. "

19 Section 3. Section 60-3A-3 NMSA 1978 (being Laws 1981,
20 Chapter 39, Section 3, as amended) is amended to read:

21 "60-3A-3. DEFINITIONS. --As used in the Liquor Control
22 Act:

23 A. "alcoholic beverages" means distilled or
24 rectified spirits, potable alcohol, brandy, whiskey, rum, gin
25 and aromatic bitters bearing the federal internal revenue

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1 strip stamps or any similar alcoholic beverage, including
2 blended or fermented beverages, dilutions or mixtures of one
3 or more of the foregoing containing more than one-half of one
4 percent alcohol, but excluding medicinal bitters;

5 B. "beer" means [~~any~~] an alcoholic beverage
6 obtained by the fermentation of any infusion or decoction of
7 barley, ~~malt~~ and hops or other cereals in water, and includes
8 porter, beer, ale and stout;

9 C. "brewer" means [~~any~~] a person who owns or
10 operates a business for the manufacture of beer;

11 D. "club" means:
12 (1) any nonprofit group, including an
13 auxiliary or subsidiary group, organized and operated under
14 the laws of this state with a membership of not less than
15 fifty members who pay membership dues at the rate of not less
16 than five dollars (\$5.00) per year and who, under the
17 constitution and bylaws of the club, have all voting rights
18 and full membership privileges and which group is the owner,
19 lessee or occupant of premises used exclusively for club
20 purposes and which group the director finds:

21 (a) is operated solely for recreation,
22 social, patriotic, political, benevolent or athletic purposes;
23 and

24 (b) the proposed licensee has been
25 granted an exemption by the United States from the payment of

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1 the federal income tax as a club under the provisions of
2 Section 501(a) of the Internal Revenue Code of 1986, as
3 amended, or, if the applicant has not operated as a club for a
4 sufficient time to be eligible for the income tax exemption,
5 it must execute and file with the director a sworn letter of
6 intent declaring that it will, in good faith, apply for such
7 exemption as soon as it is eligible; or

8 (2) an airline passenger membership club
9 operated by an air common carrier [~~which~~] that maintains or
10 operates a clubroom at an international airport terminal. For
11 the purposes of this paragraph, "air common carrier" means a
12 person engaged in regularly scheduled air transportation
13 between fixed termini under a certificate of public
14 convenience and necessity issued by the civil aeronautics
15 board;

16 E. "commission" means the secretary of public
17 safety when the term is used in reference to the enforcement
18 and investigatory provisions of the Liquor Control Act and
19 means the superintendent of regulation and licensing when the
20 term is used in reference to the licensing provisions of the
21 Liquor Control Act;

22 F. "department" means the special investigations
23 [~~division~~] section of the New Mexico state police division of
24 the department of public safety when the term is used in
25 reference to the enforcement and investigatory provisions of

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1 the Liquor Control Act and means the superintendent of
2 regulation and licensing when the term is used in reference to
3 the licensing provisions of the Liquor Control Act;

4 G. "director" means the ~~[director]~~ commander of
5 the special investigations ~~[division]~~ section of the New
6 Mexico state police division of the department of public
7 safety when the term is used in reference to the enforcement
8 and investigatory provisions of the Liquor Control Act and
9 means the superintendent of regulation and licensing when the
10 term is used in reference to the licensing provisions of the
11 Liquor Control Act;

12 H. "dispenser" means ~~[any]~~ a person licensed under
13 the provisions of the Liquor Control Act selling, offering for
14 sale or having in his possession with the intent to sell
15 alcoholic beverages both by the drink for consumption on the
16 licensed premises and in unbroken packages for consumption and
17 not for resale off the licensed premises;

18 I. "distiller" means ~~[any]~~ a person engaged in
19 manufacturing spirituous liquors;

20 J. "golf course" means a tract of land and
21 facilities used for playing golf and other recreational
22 activities that includes tees, fairways, greens, hazards,
23 putting greens, driving ranges, recreational facilities,
24 patios, pro shops, cart paths and public and private roads
25 that are located within the tract of land;

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1 K. "governing body" means the board of county
2 commissioners of a county or the city council or city
3 commissioners of a municipality;

4 L. "hotel" means [~~any~~] an establishment or complex
5 having a resident of New Mexico as a proprietor or manager and
6 where, in consideration of payment, meals and lodging are
7 regularly furnished to the general public. The establishment
8 or complex must maintain for the use of its guests a minimum
9 of twenty-five sleeping rooms;

10 M "licensed premises" means the contiguous areas
11 or areas connected by indoor passageways of a structure and
12 the outside dining, recreation and lounge areas of the
13 structure that are under the direct control of the licensee
14 and from which the licensee is authorized to sell, serve or
15 allow the consumption of alcoholic beverages under the
16 provisions of its license; provided that in the case of a
17 restaurant, hotel, golf course or racetrack, "licensed
18 premises" includes all public and private rooms, facilities
19 and areas in which alcoholic beverages are sold or served in
20 the customary operating procedures of the restaurant, hotel,
21 golf course or racetrack;

22 N. "local option district" means [~~any~~] a county
23 [~~which~~] that has voted to approve the sale, serving or public
24 consumption of alcoholic beverages, or any incorporated
25 municipality [~~which~~] that falls within a county [~~which~~] that

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1 has voted to approve the sale, serving or public consumption
2 of alcoholic beverages, or any incorporated municipality of
3 over five thousand population [~~which~~] that has independently
4 voted to approve the sale, serving or public consumption of
5 alcoholic beverages under the terms of the Liquor Control Act
6 or any former act;

7 O. "manufacturer" means a distiller, rectifier,
8 brewer or winer;

9 P. "minor" means [~~any~~] a person under twenty-one
10 years of age;

11 Q. "package" means [~~any~~] an immediate container of
12 alcoholic beverages [~~which~~] that is filled or packed by a
13 manufacturer or wine bottler for sale by the manufacturer or
14 wine bottler to wholesalers;

15 R. "person" means an individual, corporation,
16 firm, partnership, copartnership, association or other legal
17 entity;

18 S. "rectifier" means [~~any~~] a person who blends,
19 mixes or distills alcohol with other liquids or substances for
20 the purpose of making an alcoholic beverage for the purpose of
21 sale other than to the consumer by the drink, and includes all
22 bottlers of spirituous liquors;

23 T. "restaurant" means [~~any~~] an establishment
24 having a New Mexico resident as a proprietor or manager
25 [~~which~~] that is held out to the public as a place where meals

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1 are prepared and served primarily for on-premises consumption
2 to the general public in consideration of payment and ~~[which]~~
3 that has a dining room, a kitchen and the employees necessary
4 for preparing, cooking and serving meals; provided that
5 "restaurant" does not include establishments as defined in
6 ~~[regulations]~~ rules promulgated by the director serving only
7 hamburgers, sandwiches, salads and other fast foods;

8 U. "retailer" means ~~[any]~~ a person licensed under
9 the provisions of the Liquor Control Act selling, offering for
10 sale or having in his possession with the intent to sell ~~[any]~~
11 alcoholic beverages in unbroken packages for consumption and
12 not for resale off the licensed premises;

13 V. "spirituous liquors" means alcoholic beverages
14 as defined in Subsection A of this section except fermented
15 beverages such as wine, beer and ale;

16 W. "wholesaler" means ~~[any]~~ a person whose place
17 of business is located in New Mexico and who sells, offers for
18 sale or possesses for the purpose of sale any alcoholic
19 beverages for resale by the purchaser;

20 X. "wine" includes the words "fruit juices" and
21 means alcoholic beverages obtained by the fermentation of the
22 natural sugar contained in fruit or other agricultural
23 products, with or without the addition of sugar or other
24 products, ~~[which]~~ that do not contain less than one-half of
25 one percent nor more than twenty-one percent alcohol by

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1 volume;

2 Y. "wine bottler" means [~~any~~] a New Mexico
3 wholesaler who is licensed to sell wine at wholesale for
4 resale only and who buys wine in bulk and bottles it for
5 wholesale resale;

6 Z. "winegrower" means [~~any~~] a person who owns or
7 operates a business for the manufacture of wine; and

8 AA. "winer" means a winegrower. "

9 Section 4. Section 60-4B-1 NMSA 1978 (being Laws 1981,
10 Chapter 39, Section 4, as amended) is amended to read:

11 "60-4B-1. SPECIAL INVESTIGATIONS [~~DIVISION--DIRECTOR~~]
12 SECTION. --

13 [~~A.-~~] There is created the "special investigations
14 [~~division~~] section" of the New Mexico state police division of
15 the department of public safety [~~department.~~

16 ~~B. The director of the special investigations~~
17 ~~division shall be appointed by the secretary of public safety~~
18 ~~with the approval of the governor. He shall serve at the~~
19 ~~pleasure of the secretary]. "~~

20 Section 5. Section 60-4B-2 NMSA 1978 (being Laws 1981,
21 Chapter 39, Section 5) is amended to read:

22 "60-4B-2. POWERS AND DUTIES OF THE DIRECTOR. -- [~~A.-~~] The
23 director is responsible for the operation of the department.
24 It is his duty to supervise all operations of the department
25 and to:

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1 ~~[(1)]~~ A. administer and enforce the laws the
2 administration of which the department is charged;

3 ~~[(2)]~~ B. exercise general supervisory authority
4 over all employees of the department;

5 ~~[(3)]~~ C. organize the department into such units
6 to enable it to function most effectively;

7 ~~[(4)]~~ D. confer authority and delegate
8 responsibility as is necessary and appropriate;

9 ~~[(5)]~~ E. employ, within the limitations of current
10 appropriations and personnel laws, such persons as are
11 required to discharge his duties;

12 ~~[(6)]~~ F. undertake studies and conduct courses of
13 instruction for department employees which will improve the
14 operations of the department and advance its purposes;

15 ~~[(7)]~~ G. require compliance by employees of the
16 department with his verbal and written instructions by
17 whatever disciplinary means appropriate; and

18 ~~[(8)]~~ H. purchase or lease personal property and
19 lease real property for use by the department.

20 ~~[B.—The director, his agents, auditors and~~
21 ~~employees are commissioned as peace officers in the~~
22 ~~performance of their duties.]"~~

23 Section 6. Section 60-4B-4.1 NMSA 1978 (being Laws 1993,
24 Chapter 329, Section 1) is amended to read:

25 "60-4B-4.1. LOCAL LAW ENFORCEMENT--DEPARTMENT OF PUBLIC
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1 SAFETY--REPORTING REQUIREMENTS--AUTHORITY TO REQUEST
2 INVESTIGATIONS. --

3 A. Within thirty days following the date of
4 issuance of a citation pursuant to the provisions of the
5 Liquor Control Act, the department of public safety or the law
6 enforcement agency of a municipality or county shall report
7 alleged violations of that act to the alcohol and gaming
8 division of the regulation and licensing department.

9 B. The director of the alcohol and gaming division
10 of the regulation and licensing department may request the
11 investigators of the special investigations ~~[division]~~ section
12 of the New Mexico state police division of the department of
13 public safety to investigate licensees or activities that the
14 director has reasonable cause to believe are in violation of
15 the Liquor Control Act. "

16 Section 7. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
17 PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES IN LAW. --

18 A. On July 1, 2001, all personnel, appropriations,
19 money, records, furniture, equipment and other personal and
20 real property of the special investigations division of the
21 department of public safety shall be transferred to the
22 special investigations section of the New Mexico state police
23 division of the department of public safety.

24 B. On July 1, 2001, all contracts and other
25 obligations binding on the special investigations division of

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1 the department of public safety shall be transferred to the
2 special investigations section of the New Mexico state police
3 division of the department of public safety.

4 C. On July 1, 2001, all references in the law to
5 the special investigations division of the department of
6 public safety shall be deemed to be references to the special
7 investigations section of the New Mexico state police division
8 of the department of public safety and all references in the
9 law to the director of the special investigations division
10 shall be deemed to be references to the commander of the
11 special investigations section of the New Mexico state police
12 division of the department of public safety.

13 Section 8. APPROPRIATION. -- One hundred ninety-four
14 thousand five hundred dollars (\$194,500) is appropriated from
15 the general fund to the department of public safety for
16 expenditure in fiscal year 2002 to pay salaries, benefits and
17 other expenses necessary to effectuate the transfer of the
18 special investigations division of the department of public
19 safety to the special investigations section of the New Mexico
20 state police division of the department of public safety. Any
21 unexpended or unencumbered balance remaining at the end of
22 fiscal year 2002 shall revert to the general fund.

23 Section 9. EFFECTIVE DATE. -- The effective date of the
24 provisions of this act is July 1, 2001.