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SENATE BILL 380

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO MILITARY AFFAIRS; AUTHORIZING ACTIVATION OF THE NATIONAL GUARD AND STATE DEFENSE FORCE IN THE CASE OF CYBERSECURITY THREATS; PLACING LIMITS ON THE AUTHORITY EXERCISED PURSUANT TO SUCH ACTIVATIONS; PROHIBITING THE INCURRENCE OF DEBT FOR SUCH ACTIVATIONS; DECLARING AN EMERGENCY.

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

**SECTION 1.** Section 20-2-3 NMSA 1978 (being Laws 1987, Chapter 318, Section 10, as amended) is amended to read:

"20-2-3. GOVERNOR--POWER TO CALL OUT MILITIA.--

A. The governor may, in case of insurrection, invasion, riot or breach of the peace or of imminent danger thereof or in case of other emergency, order into active service of the state the militia or any components or parts

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1       thereof that have not been called into federal service. As  
2       used in this section, "emergency" includes any man-made or  
3       natural disaster causing or threatening widespread physical or  
4       economic harm that is beyond local control and requiring the  
5       resources of the state.

6               B. The governor may also order any member of the  
7       national guard or state defense force to active state service  
8       for a period not to exceed a cumulative total of four months  
9       within a calendar year for any individual member for the  
10       following reasons:

11                       (1) to protect critical infrastructure in the  
12       state from a cybersecurity threat or security vulnerability;

13                       (2) to protect an information system owned or  
14       operated by the state from a cybersecurity threat or security  
15       vulnerability;

16                       (3) to protect information that is stored on,  
17       processed by or transiting on an information system owned or  
18       operated by the state from a cybersecurity threat or security  
19       vulnerability; or

20                       (4) to identify the source of a cybersecurity  
21       threat.

22               C. A member of the national guard or state defense  
23       force called to active service pursuant to the provisions of  
24       Subsection B of this section shall not have any police powers  
25       or arrest authority. "Subsection B of Section 20-2-3 NMSA

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1 1978" shall be cited on all orders, vouchers and payroll  
2 documents submitted for reimbursement pursuant to Section  
3 20-1-6 NMSA 1978 in support of all actions authorized by  
4 Subsection B of this section. In no case shall an activation  
5 ordered pursuant to Subsection B of this section be used to  
6 incur a debt under Article 9, Section 7 of the constitution of  
7 New Mexico.

8 ~~[B-]~~ D. In case of any breach of the peace, tumult,  
9 riot or resistance to process of this state or imminent danger  
10 thereof, the sheriff of a county may call for aid from the  
11 governor as commander-in-chief of the national guard. If it  
12 appears to the governor that the power of the county is  
13 insufficient to enable the sheriff to preserve the peace and  
14 protect the lives and property of the peaceful residents of the  
15 county or to overcome the resistance to process of this state,  
16 the governor shall, on application of the sheriff, order out  
17 such military force as is necessary.

18 ~~[G-]~~ E. When any portion of the militia is called  
19 out for the purpose of suppressing an unlawful or riotous  
20 assembly, the commander of the troops shall cooperate with the  
21 civil officers to the fullest extent consistent with the  
22 accomplishment of the object for which the troops were called.  
23 The civil officials may express to the commander of the troops  
24 the general or specific objective that the civil officials  
25 desire to accomplish, but the tactical direction of the troops,

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1 the kind and extent of force to be used and the particular  
2 means to be employed to accomplish the object specified by the  
3 civil officers shall be left solely to the commander of the  
4 troops present on duty.

5 ~~[D-]~~ F. When any portion of the militia is ordered  
6 into active service pursuant to this section in case of an  
7 emergency, the militia may provide those resources and services  
8 necessary to avoid or minimize economic or physical harm until  
9 a situation becomes stabilized and again under local self-  
10 support and control, including the provision, on a temporary,  
11 emergency basis, for lodging, sheltering, health care, food and  
12 any transportation or shipping necessary to protect lives or  
13 public property; or for any other action necessary to protect  
14 the public health, safety and welfare.

15 ~~[E-]~~ G. In the event of the exercise by the  
16 governor of the powers under this section, the governor shall  
17 first utilize the personnel and assets of the national guard  
18 and only in their absence or insufficiency utilize the  
19 personnel and assets of the state defense force."

20 **SECTION 2. EMERGENCY.**--It is necessary for the public  
21 peace, health and safety that this act take effect immediately.