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HOUSE BILL 277

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Gail Armstrong and Cathrynn N. Brown

AN ACT

RELATING TO THE NEW MEXICO STATE DEFENSE FORCE; CHANGING THE
REQUIREMENTS FOR UTILIZATION OF THE STATE DEFENSE FORCE;
REMOVING THE AGE LIMIT FOR STATE DEFENSE FORCE MEMBERS;
PROVIDING ADDITIONAL POWERS TO THE ADJUTANT GENERAL.

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
thereof that have not been called into federal service. As

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1 used in this section, "emergency" includes any man-made or
2 natural disaster causing or threatening widespread physical or
3 economic harm that is beyond local control and requiring the
4 resources of the state.

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

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

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

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

18 (4) to identify the source of a cybersecurity
19 threat.

20 C. A member of the national guard called to active
21 service pursuant to the provisions of Subsection B of this
22 section shall not have any police powers or arrest authority.
23 "Subsection B of Section 20-2-3 NMSA 1978" shall be cited on
24 all orders, vouchers and payroll documents submitted for
25 reimbursement pursuant to Section 20-1-6 NMSA 1978 in support

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1 of all actions authorized by Subsection B of this section. In
2 no case shall an activation ordered pursuant to Subsection B of
3 this section be used to incur a debt under Article 9, Section 7
4 of the constitution of New Mexico.

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

15 E. When any portion of the militia is called out
16 for the purpose of suppressing an unlawful or riotous assembly,
17 the commander of the troops shall cooperate with the civil
18 officers to the fullest extent consistent with the
19 accomplishment of the object for which the troops were called.
20 The civil officials may express to the commander of the troops
21 the general or specific objective that the civil officials
22 desire to accomplish, but the tactical direction of the troops,
23 the kind and extent of force to be used and the particular
24 means to be employed to accomplish the object specified by the
25 civil officers shall be left solely to the commander of the

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1 troops present on duty.

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

12 G. In the event of the exercise by the governor of
13 the powers under this section, the governor shall first utilize
14 the personnel and assets of the national guard and [~~only in~~
15 ~~their absence or insufficiency~~], at the governor's discretion,
16 may utilize the personnel and assets of the state defense
17 force."

18 SECTION 2. Section 20-2-6 NMSA 1978 (being Laws 1987,
19 Chapter 318, Section 13) is amended to read:

20 "20-2-6. GOVERNOR--CALL FOR FEDERAL OR STATE SERVICE--
21 POWERS.--

22 A. When the national guard or a part thereof is
23 called or ordered into active federal service under the
24 constitution and laws of the United States and the numbers or
25 composition of the national guard forces are insufficient to

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1 meet such call or order, the governor may order out and cause
2 through the adjutant general to be enrolled into the organized
3 militia such persons as may be required and expected to
4 reasonably meet the federal call or order.

5 B. The governor may order out the organized militia
6 when:

7 (1) the national guard or any significant
8 portion thereof is called or ordered into active federal
9 service and the remaining national guard forces are
10 insufficient for the needs of the state; or

11 (2) the ~~[total strength or composition of the~~
12 ~~national guard within the state is deemed by the governor to be~~
13 ~~insufficient]~~ governor deems it necessary to meet a major
14 disaster, experienced or anticipated. The governor is
15 authorized to call into active state service the state defense
16 force or any portion thereof as may be necessary for the
17 protection and well being of the state. If the numbers or
18 composition of the state defense force ~~[be]~~ is inadequate to
19 meet the need, the governor ~~[can]~~ may call out and cause
20 through the adjutant general to be enrolled from the
21 unorganized militia such persons as are required to bring the
22 organized militia up to strength."

23 SECTION 3. Section 20-5-1 NMSA 1978 (being Laws 1987,
24 Chapter 318, Section 32) is amended to read:

25 "20-5-1. NEW MEXICO STATE DEFENSE FORCE ESTABLISHED--NOT

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1 IN FEDERAL SERVICE--DEFINITIONS.--

2 A. The "New Mexico state defense force" is
3 established as an element of the militia in the department of
4 military affairs. The members and organizations of the former
5 New Mexico state guard are transferred to the New Mexico state
6 defense force on the effective date of this act.

7 B. Nothing in Chapter 20 NMSA 1978 shall be
8 construed as authorizing the New Mexico state defense force or
9 any part thereof to be called, ordered or in any manner drafted
10 by federal authorities into the military service of the United
11 States, but no person by reason of [~~his~~] enlistment or
12 appointment in the state defense force shall be exempted from
13 military service under any law of the United States.

14 C. The following definitions apply to the duty
15 statuses under which members of the state defense force serve:

16 (1) "militia duty" means the performance of
17 actual military service for the state in time of need when
18 called by the governor or adjutant general [~~following~~] upon
19 mobilization of the national guard. It may be performed by the
20 standing cadre of the state defense force at any time so
21 ordered [~~following~~] upon mobilization of the national guard.
22 It may be performed by the unorganized militia following its
23 call by the governor pursuant to Subsection B of Section 20-2-6
24 NMSA 1978 [~~of this chapter~~], in which case it shall include the
25 post-call training of the New Mexico state defense force

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1 pursuant thereto; and

2 (2) "cadre duty" means the normal service and
3 training performed by the standing cadre of the state defense
4 force in anticipation and support of militia duty, including
5 organization, administration and other pre-call matters."

6 SECTION 4. Section 20-5-3 NMSA 1978 (being Laws 1987,
7 Chapter 318, Section 34) is amended to read:

8 "20-5-3. COMPOSITION--ENLISTMENT--APPOINTMENT.--

9 A. The state defense force shall consist of persons
10 [~~between the ages of~~] eighteen [~~and sixty-four~~] years old or
11 older voluntarily appointed or voluntarily enlisted therein and
12 such additional members of the unorganized militia as therein
13 may be appointed, enlisted, enrolled or inducted as provided by
14 law. [~~Volunteer members may be retained beyond age sixty-four~~
15 ~~with their consent by direction of the adjutant general.~~]

16 B. The officers of the state defense force shall be
17 appointed by the governor and serve at [~~his~~] the governor's
18 pleasure. They shall be chosen from the public and private
19 leadership bases within local communities so as to best enable
20 the community to efficiently muster and lead its people and
21 protect its assets and well being."

22 SECTION 5. Section 20-5-6 NMSA 1978 (being Laws 1987,
23 Chapter 318, Section 37) is amended to read:

24 "20-5-6. UNIFORM--RANK PRECEDENCE AND COMMAND.--

25 A. The state defense force shall be uniformed. The

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1 ~~[governor]~~ adjutant general shall by regulation prescribe the
2 uniform and insignia of the ~~[New Mexico]~~ state defense force,
3 which uniform and insignia shall include distinctive devices
4 identifying it as the uniform of the state defense force and
5 distinguishing it from the national guard. When in uniform,
6 members of the state defense force will reasonably conform to
7 the dress and appearance standards of the national guard. The
8 wearing of permanent military decorations earlier awarded is
9 authorized.

10 B. The grade structure of the state defense force
11 shall to the extent practicable be the same as that prescribed
12 for the army national guard.

13 C. The senior line officer without distinction as
14 to component present in any organization or formation of the
15 state defense force shall command, unless the adjutant general
16 shall designate otherwise."

17 SECTION 6. Section 20-5-16 NMSA 1978 (being Laws 2003,
18 Chapter 111, Section 1) is amended to read:

19 "20-5-16. STATE DEFENSE FORCE--CADRE DUTY--WORKERS'
20 COMPENSATION.--

21 A. When a member of the state defense force is on
22 state-ordered militia duty, ~~[he]~~ the member is a worker under
23 the Workers' Compensation Act and the department of military
24 affairs is ~~[his]~~ the member's employer.

25 B. Members of the state defense force, while

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1 performing cadre duty, may be utilized by the adjutant general
2 to assist the national guard with training or other exercises
3 that are not considered state-ordered militia duty.

4 C. The average weekly wage of a member of the state
5 defense force shall be computed at the pay earned in [~~his~~] the
6 member's civilian capacity. Disability benefits to a member of
7 the state defense force shall be limited to medical benefits
8 and two-thirds of [~~his~~] the member's civilian pay if [~~he~~] the
9 member is unable to work.

10 [~~G-~~] D. A member of the state defense force shall
11 not be considered a worker under the Workers' Compensation Act
12 when performing cadre duty.

13 [~~D-~~] E. As used in this section:

14 (1) "cadre duty" means the normal service and
15 training of the standing cadre of the state defense force in
16 anticipation and support of militia duty, including
17 organization, administration and other pre-call matters; and

18 (2) "militia duty" means the performance of
19 actual military service for the state in time of need when
20 called by the governor or adjutant general following
21 mobilization of the national guard. If performed by the
22 unorganized militia following its call by the governor pursuant
23 to Section 20-2-6 NMSA 1978, it shall include the post-call
24 training of the New Mexico state defense force as required by
25 that call.

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F. Nothing in this section shall be construed as a waiver of immunity under the Tort Claims Act."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.