

1 HOUSE BILL 337

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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8 ENDORSED BY THE MILITARY AND VETERANS' AFFAIRS COMMITTEE

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10 AN ACT

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

21 A. The governor may, in case of insurrection,
22 invasion, riot or breach of the peace or of imminent danger
23 thereof or in case of other emergency, order into active
24 service of the state the militia or any components or parts
25 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 New Mexico state
17 defense 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 New Mexico
16 state defense force or any portion thereof as may be necessary
17 for the protection and ~~[well-being]~~ well-being of the state.
18 If the numbers or composition of the New Mexico state defense
19 force ~~[be]~~ is inadequate to meet the need, the governor ~~[can]~~
20 may call out and cause through the adjutant general to be
21 enrolled from the unorganized militia such persons as are
22 required to bring the 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~~] April 10,
7 1987.

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

16 C. The following definitions apply to the duty
17 statuses under which members of the New Mexico state defense
18 force serve:

19 (1) "militia duty" means the performance of
20 actual military service for the state in time of need when
21 called by the governor or adjutant general [~~following~~] upon
22 mobilization of the national guard. It may be performed by the
23 standing cadre of the New Mexico state defense force at any
24 time so ordered [~~following~~] upon mobilization of the national
25 guard. It may be performed by the unorganized militia

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1 following its call by the governor pursuant to Subsection B of
2 Section 20-2-6 NMSA 1978 [~~of this chapter~~], in which case it
3 shall include the post-call training of the New Mexico state
4 defense force pursuant thereto; and

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

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

12 "20-5-3. COMPOSITION--ENLISTMENT--APPOINTMENT.--

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

21 B. The officers of the New Mexico state defense
22 force shall be appointed by the governor and serve at [~~his~~] the
23 governor's pleasure. They shall be chosen from the public and
24 private leadership bases within local communities so as to best
25 enable the community to efficiently muster and lead its people

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1 and protect its assets and [~~well-being~~] well-being."

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

4 "20-5-6. UNIFORM--RANK PRECEDENCE AND COMMAND.--

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

15 B. The grade structure of the New Mexico state
16 defense force shall to the extent practicable be the same as
17 that prescribed for the army national guard.

18 C. The senior line officer without distinction as
19 to component present in any organization or formation of the
20 New Mexico state defense force shall command, unless the
21 adjutant general shall designate otherwise."

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

24 "20-5-16. NEW MEXICO STATE DEFENSE FORCE--CADRE
25 DUTY--WORKERS' COMPENSATION.--

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1 A. When a member of the New Mexico state defense
2 force is on state-ordered militia duty, [~~he~~] the member is a
3 worker under the Workers' Compensation Act and the department
4 of military affairs is [~~his~~] the member's employer.

5 B. Members of the New Mexico state defense force,
6 while performing cadre duty, may be utilized by the adjutant
7 general to assist the national guard with training or other
8 exercises that are not considered state-ordered militia duty.

9 [~~B-~~] C. The average weekly wage of a member of the
10 New Mexico state defense force shall be computed at the pay
11 earned in [~~his~~] the member's civilian capacity. Disability
12 benefits to a member of the New Mexico state defense force
13 shall be limited to medical benefits and two-thirds of [~~his~~]
14 the member's civilian pay if [~~he~~] the member is unable to work.

15 [~~G-~~] D. A member of the New Mexico state defense
16 force shall not be considered a worker under the Workers'
17 Compensation Act when performing cadre duty.

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

19 (1) "cadre duty" means the normal service and
20 training of the standing cadre of the New Mexico state defense
21 force in anticipation and support of militia duty, including
22 organization, administration and other pre-call matters; and

23 (2) "militia duty" means the performance of
24 actual military service for the state in time of need when
25 called by the governor or adjutant general following

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1 mobilization of the national guard. If performed by the
2 unorganized militia following its call by the governor pursuant
3 to Section 20-2-6 NMSA 1978, it shall include the post-call
4 training of the New Mexico state defense force as required by
5 that call.

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

8 SECTION 7. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2019.

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