

1 SENATE BILL 146

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 William F. Burt

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10 AN ACT

11 RELATING TO MILITARY AFFAIRS; AMENDING THE POWERS OF THE
12 ADJUTANT GENERAL; AUTHORIZING ACTIVATION OF THE NATIONAL GUARD
13 AND THE STATE DEFENSE FORCE IN THE CASE OF CERTAIN EVENTS;
14 ESTABLISHING THE NEW MEXICO STATE DEFENSE FORCE; AMENDING,
15 REPEALING AND ENACTING SECTIONS OF THE NEW MEXICO MILITARY
16 CODE.

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

19 SECTION 1. Section 20-1-4 NMSA 1978 (being Laws 1987,
20 Chapter 318, Section 4) is amended to read:

21 "20-1-4. GOVERNOR TO BE COMMANDER-IN-CHIEF--ENFORCEMENT
22 OF NEW MEXICO MILITARY CODE.--

23 A. The governor shall be the commander-in-chief of
24 the military forces, except so much thereof as may be in the
25 actual service of the United States, and may employ the

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1 military forces for the defense or relief of the state, the
2 enforcement of its law and the protection of life and property
3 therein.

4 B. The adjutant general shall be the commanding
5 general of New Mexico, and the deputy adjutant general shall be
6 the deputy commanding general of New Mexico.

7 [~~B.~~] C. Whenever the governor or acting governor is
8 unable to personally perform the duties of commander-in-chief
9 or whenever the governor so directs, the adjutant general or,
10 in [~~his~~] the adjutant general's absence, the senior line
11 officer of the national guard present for duty with the troops
12 shall command the military forces.

13 [~~C.~~] D. The governor may appoint a staff consisting
14 of the adjutant general and aides-de-camp of field grade or
15 higher who shall be detailed from the national guard or the
16 state defense force. The governor may designate honorarily
17 other persons as colonels aide-de-camp.

18 [~~D.~~] E. The governor may, by executive orders,
19 proclamations or regulations not inconsistent with law, enforce
20 all the provisions of the New Mexico Military Code."

21 **SECTION 2.** Section 20-1-5 NMSA 1978 (being Laws 1987,
22 Chapter 318, Section 5, as amended) is amended to read:

23 "20-1-5. ADJUTANT GENERAL--APPOINTMENT, POWERS AND
24 DUTIES.--In case of a vacancy, the governor shall appoint as
25 the adjutant general of New Mexico for a term of five years an

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1 officer who for three years immediately preceding the
2 appointment as the adjutant general of New Mexico has been
3 federally recognized as an officer in the national guard of New
4 Mexico and who during service in the national guard of New
5 Mexico has received federal recognition in the rank of colonel
6 or higher. The adjutant general shall not be removed from
7 office during the term for which appointed, except for cause to
8 be determined by a court-martial or efficiency board legally
9 convened for that purpose in the manner prescribed by the
10 national guard regulations of the United States department of
11 defense. The adjutant general shall have the military grade of
12 major general and shall receive the same pay and allowances as
13 is prescribed by federal law and regulations for members of the
14 active military in the grade of major general, unless a
15 different rate of pay and allowances is specified in the annual
16 appropriations bill. The adjutant general may promulgate rules
17 for the conduct of courts-martial and punishments under the
18 Code of Military Justice. Such procedural rules shall be
19 consistent with and carry into effect the New Mexico Military
20 Code and afford reasonable due process to criminal defendants.

21 The adjutant general shall:

22 A. prepare and publish, by order of the governor,
23 such orders, rules and regulations, consistent with law, as are
24 necessary to maintain the military forces in a state of
25 efficiency in conformity with the needs of the state and the

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1 federal defense requirements;

2 B. supervise the receipt, preservation, repair,
3 distribution, issue and collection of all arms and military
4 equipment of the state;

5 C. supervise all personnel, organizations,
6 facilities, equipment, supplies and funds of the military
7 forces;

8 D. maintain records of all members of the military
9 forces and keep on file in the adjutant general's offices
10 copies of all orders, reports, regulations and communications
11 received and issued by the adjutant general;

12 E. perform such other duties as may be required by
13 the commander-in-chief; and

14 F. have a seal of office."

15 SECTION 3. Section 20-2-6 NMSA 1978 (being Laws 1987,
16 Chapter 318, Section 13) is amended to read:

17 "20-2-6. GOVERNOR--CALL FOR FEDERAL OR STATE SERVICE--
18 POWERS.--

19 A. When the national guard or a part thereof is
20 called or ordered into active federal service under the
21 constitution and laws of the United States and the numbers or
22 composition of the national guard forces are insufficient to
23 meet such call or order, the governor may order out and cause
24 through the adjutant general to be enrolled into the organized
25 militia such persons as may be required and expected to

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1 reasonably meet the federal call or order.

2 B. The governor may order out the organized militia
3 when:

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

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

20 SECTION 4. Section 20-3-2 NMSA 1978 (being Laws 1987,
21 Chapter 318, Section 17, as amended) is amended to read:

22 "20-3-2. DEPARTMENT STRUCTURE--AUTHORITY OF ADJUTANT
23 GENERAL.--

24 A. The department of military affairs ~~[is composed~~
25 ~~of]~~ consists of:

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- 1 (1) the office of the adjutant general;
2 (2) three subordinate military divisions:
3 (a) the army national guard division;
4 (b) the air national guard division; and
5 (c) the state defense force division;

6 and

7 [~~(3)~~ ~~one subordinate civil division, the civil~~
8 ~~air patrol division; and~~

9 ~~(4)~~ (3) five subordinate [~~support~~
10 ~~agencies~~] civil divisions:

- 11 (a) the selective service office;
12 (b) the state armory board;
13 (c) the civil air patrol division;
14 [~~(e)~~] (d) the state programs [~~office~~]
15 division; and

16 [~~(d)~~] (e) the United States property and
17 fiscal office and such other agencies, administrative staffs
18 and clerical staffs necessary for departmental operation that
19 the adjutant general may by regulation prescribe.

20 B. The adjutant general is the military chief of
21 staff to the governor and is the head of the department of
22 military affairs.

23 C. The adjutant general shall prescribe policies,
24 rules and procedures for the orderly functioning of the
25 department of military affairs, which may include subordinate

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1 organizational structures and lines of authority.

2 D. The adjutant general may employ such
3 administrative, technical, clerical and other personnel as the
4 adjutant general deems necessary and may fix the compensation
5 of exempt personnel subject to the concurrence of the
6 department of finance and administration.

7 E. The adjutant general may make expenditures from
8 appropriations or from other funds available to the adjutant
9 general for all purposes within Chapter 20 NMSA 1978.

10 F. The adjutant general is authorized to accept
11 through the United States property and fiscal officer such
12 equipment, supplies, arms, facilities and personnel support
13 funding as may be authorized and appropriated by federal law.

14 G. The adjutant general shall be furnished suitable
15 buildings, facilities, supplies and equipment for conducting
16 the business of the department of military affairs to include
17 the proper storage, repair and issuance of military property.

18 H. The adjutant general may appoint as assistant
19 adjutants general one officer from each of the three military
20 divisions in the department of military affairs. The officers
21 appointed shall hold the rank of brigadier general during such
22 appointment. The qualifications of each person so appointed
23 shall meet the specific standards required for such appointment
24 within Chapter 20 NMSA 1978 and any applicable federal
25 standards or requirements. Once appointed, the assistant

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1 adjutants general shall serve at the pleasure of the adjutant
2 general; their performance will be reviewed annually, in
3 January, by the adjutant general; and if relieved, an assistant
4 adjutant general shall revert to the rank previously held or to
5 such higher rank to which promoted and federally recognized
6 while serving as assistant adjutant general. The adjutant
7 general may designate one federally recognized assistant
8 adjutant general as deputy adjutant general. The deputy
9 adjutant general shall serve on full-time active status for the
10 state. In the incapacity or absence from the state of the
11 adjutant general, the deputy adjutant general shall act in the
12 adjutant general's stead. In the incapacity or absence from
13 the state of both the adjutant general and the deputy adjutant
14 general, the governor may call any assistant adjutant general
15 to active service for the state. The assistant adjutants
16 general shall perform all duties that may be required of them
17 by the adjutant general. The adjutant general may delegate in
18 writing to any of the assistant adjutants general such
19 authorities and responsibilities as the adjutant general deems
20 appropriate, consistent with the constitutions, laws and
21 regulations of the state and of the United States. Assistant
22 adjutants general, when on active status for the state, shall
23 receive the same pay and allowances as are prescribed by
24 federal law and regulations for members of the active military
25 in the grade of brigadier general, unless a different rate of
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1 pay and allowances are specified in a general appropriation act
2 of the New Mexico legislature.

3 I. The adjutant general shall appoint individuals
4 to serve as ~~[director]~~ directors of the ~~[one civil division and~~
5 ~~as head of each of the four support agencies]~~ five subordinate
6 civil divisions, except as stated in Section 20-9-1 NMSA 1978.
7 The qualifications of each person so appointed shall meet the
8 specific standards required for such appointment within Chapter
9 20 NMSA 1978 and any applicable federal standards or
10 requirements.

11 J. There shall be allowed to the adjutant general a
12 contingent and entertainment fund of two thousand five hundred
13 dollars (\$2,500) annually, plus such additional appropriations
14 for carrying out the functions of the office as the legislature
15 shall deem proper."

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

18 "20-5-1. NEW MEXICO STATE DEFENSE FORCE ESTABLISHED--NOT
19 IN FEDERAL SERVICE--DEFINITIONS.--

20 A. The "New Mexico state defense force" is
21 established as an element of the militia in the department of
22 military affairs. The members and organizations of the former
23 New Mexico state guard are transferred to the New Mexico state
24 defense force on ~~[the effective date of this act]~~ April 10,
25 1987.

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

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

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

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

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

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

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

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

17 SECTION 7. Section 20-5-6 NMSA 1978 (being Laws 1987,
18 Chapter 318, Section 37) is amended to read:

19 "20-5-6. UNIFORM--RANK PRECEDENCE AND COMMAND.--

20 A. The state defense force shall be uniformed. The
21 [~~governor~~] adjutant general shall by regulation prescribe the
22 uniform and insignia of the [~~New Mexico~~] state defense force,
23 which uniform and insignia shall include distinctive devices
24 identifying it as the uniform of the state defense force and
25 distinguishing it from the national guard. When in uniform,

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1 members of the state defense force will reasonably conform to
2 the dress and appearance standards of the national guard. The
3 wearing of permanent military decorations earlier awarded is
4 authorized.

5 B. The grade structure of the state defense force
6 shall to the extent practicable be the same as that prescribed
7 for the army national guard.

8 C. The senior line officer without distinction as
9 to component present in any organization or formation of the
10 state defense force shall command, unless the adjutant general
11 shall designate otherwise."

12 SECTION 8. Section 20-5-16 NMSA 1978 (being Laws 2003,
13 Chapter 111, Section 1) is amended to read:

14 "20-5-16. STATE DEFENSE FORCE--WORKERS' COMPENSATION--
15 CADRE DUTY.--

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

20 B. Members of the state defense force, while
21 performing cadre duty, may be utilized by the adjutant general
22 to assist the national guard with training exercises or other
23 cadre duties.

24 ~~[B.]~~ C. The average weekly wage of a member of the
25 state defense force shall be computed at the pay earned in

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1 ~~[his]~~ the member's civilian capacity. Disability benefits to a
2 member of the state defense force shall be limited to medical
3 benefits and two-thirds of ~~[his]~~ the member's civilian pay if
4 ~~[he]~~ the member is unable to work.

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

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

9 (1) "cadre duty" means the normal service and
10 training of the standing cadre of the state defense force in
11 anticipation and support of militia duty, including
12 organization, administration and other pre-call matters; and

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

21 SECTION 9. Section 20-12-4 NMSA 1978 (being Laws 1987,
22 Chapter 318, Section 89, as amended) is amended to read:

23 "20-12-4. CONVENING AUTHORITIES--NONJUDICIAL PUNISHMENT
24 AUTHORITIES.--

25 A. A general, special or summary court-martial may

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1 be convened by the governor or by the adjutant general.

2 B. A special or summary court-martial may be
3 convened by the assistant adjutant general of the army national
4 guard, as to all members of the army national guard; by the
5 land component commander, as to members of the land component
6 commander's command; by the commanding [~~general~~] officer of any
7 brigade-level headquarters, as to members of the commanding
8 [~~general's~~] officer's command; by the assistant adjutant
9 general of the air national guard, as to all members of the air
10 national guard; by the assistant adjutant general of the state
11 defense force, as to all members of the state defense force;
12 and to the commanders of such equivalent level commands as may
13 be organized in the future.

14 C. A summary court-martial may be convened by a
15 battalion commander, group commander or equivalent, as to all
16 members of the commander's command.

17 D. Nonjudicial punishment authority is conferred
18 upon all general, special or summary court-martial convening
19 authorities and upon company, battery and squadron commanders
20 or equivalent, as to members of their command."

21 SECTION 10. A new section of the Code of Military Justice
22 is enacted to read:

23 "[NEW MATERIAL] PROHIBITED ACTIVITIES WITH MILITARY
24 RECRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST--
25 CONSENT NOT A DEFENSE.--

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1 A. Any person subject to Chapter 20 NMSA 1978 shall
2 be punished as a court-martial may direct if the person:

3 (1) is an officer or noncommissioned officer;

4 (2) is in a training leadership position with
5 respect to a specially protected junior member of the armed
6 forces; and

7 (3) knew, or reasonably should have known,
8 that the person was engaged in prohibited sexual activity with
9 a specially protected junior member of the armed forces.

10 B. Any person subject to Chapter 20 NMSA 1978 shall
11 be punished as a court-martial may direct if the person is a
12 military recruiter and knew, or reasonably should have known,
13 that the person was engaged in prohibited sexual activity with:

14 (1) an applicant for military service; or

15 (2) a specially protected junior member of the
16 armed forces who is enlisted under a delayed entry program.

17 C. Any person subject to Chapter 20 NMSA 1978 shall
18 be punished as a court-martial may direct if the person:

19 (1) is a commissioned, warrant or
20 noncommissioned officer;

21 (2) is in a training leadership position with
22 respect to a specially protected member of the armed forces;
23 and

24 (3) engaged in prohibited sexual activity with
25 a person that the person knew, or reasonably should have known,

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1 was a specially protected junior member of the armed forces.

2 D. Any person subject to Chapter 20 NMSA 1978 shall
3 be punished as a court-martial may direct if the person:

4 (1) is a commissioned, warrant or
5 noncommissioned officer;

6 (2) is performing duties as a military
7 recruiter; and

8 (3) engaged in prohibited sexual activity with
9 a person that the person knew, or reasonably should have known,
10 was an applicant for military service; or

11 (4) engaged in prohibited sexual activity with
12 a person that the person knew, or reasonably should have known,
13 was a specially protected junior member of the armed forces who
14 is enlisted under a delayed entry program.

15 E. Consent is not a defense to prosecution pursuant
16 to this section.

17 F. The maximum punishment of prosecution pursuant
18 to this section shall be a dishonorable discharge, forfeiture
19 of all pay and allowances received on or after the effective
20 date of the sentence and confinement for less than one year.

21 G. As used in this section:

22 (1) "applicant for military service" means a
23 person who, under regulations prescribed by the secretary
24 concerned, is an applicant for original enlistment or
25 appointment in the armed forces;

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1 (2) "military recruiter" means a person who,
2 under regulations prescribed by the secretary concerned, has
3 the primary duty to recruit persons for military service;

4 (3) "prohibited sexual activity" means, as
5 specified in regulations prescribed by the secretary concerned,
6 inappropriate physical intimacy under circumstances described
7 in such regulations;

8 (4) "regulations prescribed by the secretary
9 concerned" means rules, regulations, instructions and
10 procedures prescribed by the secretary of the army or secretary
11 of the air force with respect to soldiers or airmen of the
12 national guard;

13 (5) "specially protected junior member of the
14 armed forces" means a member of the armed forces who is:

15 (a) assigned to, or is awaiting
16 assignment to, basic training or other initial active duty for
17 training, including a member who is enlisted under a delayed
18 entry program;

19 (b) a cadet, an officer candidate or a
20 student in any other officer qualification program; or

21 (c) in any program that, by regulation
22 prescribed by the secretary concerned, is identified as a
23 training program for initial career qualification; and

24 (6) "training leadership position" means, with
25 respect to a specially protected junior member of the armed

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1 forces, any drill instructor position or other leadership
2 position in a basic training program, an officer candidate
3 school, a reserve officers' training corps unit, a training
4 program for entry into the armed forces or any program that, by
5 regulation prescribed by the secretary concerned, is identified
6 as a training program for initial career qualification."

7 SECTION 11. A new section of the Code of Military Justice
8 is enacted to read:

9 "[NEW MATERIAL] WEARING UNAUTHORIZED INSIGNIA, DECORATION,
10 BADGE, RIBBON, DEVICE OR LAPEL BUTTON.--

11 A. Any person subject to Chapter 20 NMSA 1978 shall
12 be punished as a court-martial may direct if the person:

13 (1) is not authorized to wear an insignia,
14 decoration, badge, ribbon, device or lapel button; and

15 (2) wrongfully wears such insignia,
16 decoration, badge, ribbon, device or lapel button upon the
17 person's uniform or civilian clothing.

18 B. The maximum punishment of prosecution pursuant
19 to this section shall be:

20 (1) for the wrongful wearing of the medal of
21 honor, distinguished service cross, navy cross, air force
22 cross, silver star, purple heart or a valor device on any
23 personal award, a dishonorable discharge, forfeiture of all pay
24 and allowances received on or after the effective date of the
25 sentence and confinement for less than one year; or

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(2) for all other violations of this section,
a bad conduct discharge, forfeiture of all pay and allowances
and confinement for no more than six months.

C. As used in this section, "wrongful" means that
the conduct is done without legal justification or excuse.
Actual knowledge that the person was or is not authorized to
wear the item in question is required. Knowledge may be proved
by circumstantial evidence."

SECTION 12. REPEAL.--Sections 20-4-12, 20-12-57 and
20-12-68 NMSA 1978 (being Laws 1987, Chapter 318, Section 29
and Laws 1989, Chapter 337, Sections 56 and 67) are repealed.