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FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/21

SPONSOR Burt LAST UPDATED _____ HB _____

SHORT TITLE State Defense Force SB 146

ANALYST Fischer/Courtney

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Up to \$1,000.0	Up to \$1,000.0	Up to \$3,000.0	Recurring	Appropriation Contingency Fund (General Fund Reserves)

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Military Affairs (DMA)
Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 146 makes several changes to Chapter 20 NMSA 1978, the statute governing military affairs and the New Mexico National Guard. Changes include

- 1) Establishing an adjutant general (military chief administrative office) of the department of military affairs tasked with promulgating rules for the conduct of courts-martial and punishments under the Code of Military Justice;
- 2) Giving the governor greater ability to order out the state militia (which includes the National Guard and the State Defense Force) for actual or anticipated major disasters;
- 3) Allowing the adjutant general to use cadre (in-training) State Defense Force members to assist the National Guard with training or other exercises that are not considered state-ordered militia duty;
- 4) Allowing individuals over age 64 to serve in the State Defense Force;
- 5) Prohibiting sexual activities between recruits or trainees and recruiters or training leaders in positions of special trust and providing for maximum punishments allowable for such an offense;
- 6) Directing the adjutant general to prescribe the uniform and insignia of the State Defense Force, rather than the governor;

- 7) Prohibiting members of the State Defense Force and National Guard not in federal service from wrongfully wearing unauthorized “insignia, decoration, badge, ribbon, device, or lapel button” and providing specific punishments for doing so;
- 8) Clarifying the civil and military divisions of DMA;
- 9) Clarifying the convening authorities for a special or summary court-martial;
- 10) And repealing Sections 20-4-12 (which governs military wills), 20-12-57 (which prohibits sodomy), and 20-12-68 (which prohibits dueling).

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

SB146 does not contain an appropriation, and the Department of Military Affairs reports the changes in the bill will not impact their operating budget. However, SB146 allows for expanded use of the State Defense Force, including whenever deemed necessary by the governor to respond to a major disaster and to assist the National Guard with training or other exercises that are not considered state-ordered militia duty. In the case that SB146 results in additional use of the State Defense Force, then costs to compensate force members could grow beyond the levels of past years.

Historically, the number of National Guard operations and their cost varies widely based on the number and type of emergencies or other issues requiring National Guard mobilization. Between FY11 and FY20, the annual cost of state active duty operations averaged \$851.4 thousand but ranged from \$132.4 thousand (in FY17) to \$1.5 million (in FY11).

State active duty operations undertaken by the National Guard and the State Defense Force are funded through the appropriation contingency fund in two ways: (1) through the provisions of Section 20-1-6(A) NMSA 1978, which provides for the State Treasurer to pay vouchers and payrolls up to \$1 million out of unappropriated balances in the treasury (effectively, the appropriation contingency fund) for state militia operations; or (2) through emergency appropriations and disaster allocations the governor may provide via executive order pursuant to Sections 12-11-23 through 12-11-25 NMSA 1978, which are funded through unappropriated money in the general fund (effectively, the appropriation contingency fund). If insufficient funds are available in the appropriation contingency fund, these operations would be funded through the operating reserve. DMA may also fund National Guard or State Defense Force operations through appropriations to the department, as was done in Chapter 1 of Laws 2021 (House Bill 1, the “feed bill”) for capital security during the 2021 legislative session.

Expenditures for State Active Duty Operations

(In thousands)

FY11	\$1,481.40
FY12	\$1,397.60
FY13	\$605.10
FY14	\$444.50
FY15	\$1,035.60
FY16	\$743.20
FY17	\$132.40
FY18	\$1,005.40
FY19	\$265.30
FY20	\$1,403.22

Source: Department of Military Affairs, SHARE

SIGNIFICANT ISSUES

DMA notes the updates to the New Mexico Military Code are critical to ensure it tracks with with recent changes to the uniform code of military justice and manual for courts-martial in 2019.