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HOUSE BILL 153

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

William "Bill" R. Rehm and Sander Rue

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE RESERVE OFFICER ACT;
PROVIDING CERTIFICATION FOR RESERVE OFFICERS TO ASSIST LAW
ENFORCEMENT AGENCIES ON A TEMPORARY, PART-TIME OR VOLUNTEER
BASIS; DEFINING POWERS AND DUTIES; REQUIRING TRAINING AND OTHER
QUALIFICATIONS; AMENDING SECTIONS OF THE CRIMINAL PROCEDURE
ACT, THE TORT CLAIMS ACT AND THE MOTOR VEHICLE CODE TO INCLUDE
CERTIFIED RESERVE OFFICERS; RECONCILING MULTIPLE AMENDMENTS TO
THE SAME SECTION OF LAW IN LAWS 2009.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 10 of this act may be cited as the "Reserve Officer
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Reserve Officer Act:

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1 A. "board" means the New Mexico law enforcement
2 academy board;

3 B. "certified" means meeting all the qualifications
4 for certification established by statute and rule as determined
5 by the board;

6 C. "director" means the director of the New Mexico
7 law enforcement academy; and

8 D. "reserve officer" means a volunteer or a
9 temporary or part-time employee of a state or local law
10 enforcement agency who is certified as a reserve officer by the
11 board and who is not a member of the New Mexico mounted patrol.

12 **SECTION 3. [NEW MATERIAL] QUALIFICATIONS FOR**
13 **CERTIFICATION.--**An applicant for certification as a reserve
14 officer shall provide evidence satisfactory to the board that
15 the applicant:

16 A. is a citizen of the United States and has
17 reached the age of majority;

18 B. holds a high school diploma or the equivalent;

19 C. holds a valid driver's license;

20 D. has not been convicted of or pled guilty to or
21 entered a plea of nolo contendere to:

22 (1) a felony charge; or

23 (2) a violation of a federal or state law or
24 local ordinance relating to aggravated assault, theft, driving
25 while under the influence of intoxicating liquor or drugs,

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1 controlled substances or any other crime involving moral
2 turpitude within the three-year period immediately preceding
3 the application;

4 E. has not received a dishonorable discharge from
5 any of the armed forces of the United States;

6 F. is free from any physical, emotional or mental
7 condition that might adversely affect performance as a reserve
8 officer;

9 G. is of good moral character;

10 H. has been awarded a certificate of completion
11 attesting to the applicant's completion of an approved basic
12 law enforcement training program; and

13 I. has met all other requirements for certification
14 prescribed by the board.

15 SECTION 4. [NEW MATERIAL] RESERVE OFFICER--SCOPE OF
16 AUTHORITY.--

17 A. A reserve officer commissioned by a state or
18 local law enforcement agency and assigned to the prevention and
19 detection of crime and the general enforcement of the laws of
20 this state shall have the powers of a police officer when
21 working with supervision from a full-time salaried on-duty
22 certified police officer.

23 B. The powers and authority of a reserve officer
24 extend only for the scope and duration of the officer's
25 specific assignment.

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1 SECTION 5. [NEW MATERIAL] BASIC LAW ENFORCEMENT

2 TRAINING.--

3 A. The board shall develop and adopt a basic law
4 enforcement training program for reserve officers. The
5 training program shall consist of no more than five hundred
6 hours of instruction.

7 B. Training shall be conducted by board-qualified
8 instructors and may be taught at a location designated by the
9 head of a local law enforcement agency.

10 C. A reserve officer shall not be required to meet
11 all of the physical fitness and agility requirements required
12 for certification as a law enforcement officer; provided that a
13 reserve officer completes the fitness tests at fifty percent of
14 what would be required for certification as a law enforcement
15 officer.

16 D. Domestic abuse incident training and training
17 for ensuring child safety upon the arrest of a parent or
18 guardian shall be included in the curriculum of the basic law
19 enforcement training program for reserve officers.

20 SECTION 6. [NEW MATERIAL] WAIVER OF BASIC TRAINING.--

21 A. The director shall waive the basic law
22 enforcement training program for applicants who furnish
23 evidence of satisfactory completion of a basic law enforcement
24 training program that, in the director's opinion, is
25 substantially equivalent to the board's basic law enforcement

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1 training program for reserve officers.

2 B. The director shall review all law enforcement
3 training received during an applicant's career. The director
4 shall accept an applicant's previous law enforcement training
5 if it met the standards of the board at the time of the
6 training. If an applicant's training is sufficient in some
7 areas but not in others, the director shall waive training in
8 areas in which the applicant has received sufficient training
9 and shall only require the applicant to complete training in
10 the areas where the applicant has not received sufficient
11 training.

12 C. A person who began service as a reserve officer
13 prior to July 1, 2011 may be exempted from the basic law
14 enforcement training program at the director's discretion.

15 D. A person granted a waiver pursuant to this
16 section shall meet all other requirements for certification set
17 forth in the Reserve Officer Act.

18 SECTION 7. [NEW MATERIAL] IN-SERVICE LAW ENFORCEMENT
19 TRAINING.--

20 A. The board shall develop in-service law
21 enforcement training courses for reserve officers to be
22 required every two years. The first in-service training course
23 shall commence no later than twelve months after graduation
24 from an approved basic law enforcement training program.

25 B. A reserve officer shall provide proof of

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1 completion of in-service training requirements to the director
2 no later than March 1 of the year subsequent to the year in
3 which the requirements must be met. Failure to complete
4 in-service training requirements may be grounds for suspension
5 of a reserve officer's certification. A reserve officer's
6 certification may be reinstated by the board when the reserve
7 officer presents the board with evidence of satisfaction of
8 in-service training requirements.

9 C. The director shall provide annual notice to all
10 reserve officers regarding in-service training requirements.

11 SECTION 8. [NEW MATERIAL] REPORTS--ROSTER.--

12 A. Every law enforcement agency within the state
13 shall submit quarterly a report to the director on the status
14 of each reserve officer who was commissioned by the law
15 enforcement agency. The reporting forms and submittal dates
16 shall be prescribed by the director.

17 B. The director shall maintain a roster of all
18 certified reserve officers.

19 SECTION 9. [NEW MATERIAL] REFUSAL, SUSPENSION OR
20 REVOCATION OF CERTIFICATION.--

21 A. After consultation with the commissioning agency
22 or agencies, the board may refuse to issue or may suspend or
23 revoke a reserve officer's certification when the board
24 determines that a person has:

25 (1) failed to satisfy the qualifications for

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1 certification set forth in Section 3 of the Reserve Officer
2 Act;

3 (2) committed acts that constitute dishonesty
4 or fraud;

5 (3) been convicted of, pled guilty to or
6 entered a plea of no contest to:

7 (a) any felony charge; or

8 (b) any violation of federal or state
9 law or a local ordinance relating to aggravated assault, theft,
10 driving while under the influence of intoxicating liquor or
11 drugs, controlled substances or any law or ordinance involving
12 moral turpitude; or

13 (4) knowingly made any false statement in the
14 person's application for certification.

15 B. The board shall promulgate rules and
16 administrative procedures for the suspension or revocation of a
17 reserve officer's certification that include:

18 (1) notice and an opportunity for the affected
19 reserve officer to be heard; and

20 (2) procedures for review of the board's
21 decision.

22 SECTION 10. [NEW MATERIAL] SPECIAL DEPUTY COMMISSIONS.--
23 Nothing in the Reserve Officer Act shall restrict a sheriff's
24 power to issue special deputy commissions.

25 SECTION 11. Section 31-1-2 NMSA 1978 (being Laws 1972,

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1 Chapter 71, Section 5, as amended) is amended to read:

2 "31-1-2. DEFINITIONS.--Unless a specific meaning is
3 given, as used in the Criminal Procedure Act:

4 A. "accused" means any person charged with the
5 violation of any law of this state imposing a criminal penalty;

6 B. "bail bond" is a contract between surety and the
7 state to the effect that the accused and the surety will appear
8 in court when required and will comply with all conditions of
9 the bond;

10 C. "defendant" means any person accused of a
11 violation of any law of this state imposing a criminal penalty;

12 D. "felony" means any crime so designated by law or
13 if upon conviction thereof a sentence of death or of
14 imprisonment for a term of one year or more is authorized;

15 E. "person", unless a contrary intention appears,
16 means any individual, estate, trust, receiver, cooperative
17 association, club, corporation, company, firm, partnership,
18 joint venture, syndicate or other entity;

19 F. "police officer", "law enforcement officer",
20 "peace officer" or "officer" means any full-time salaried ~~[or]~~
21 officer, certified part-time salaried officer or commissioned
22 certified reserve officer who by virtue of office or public
23 employment is vested by law with the duty to maintain the
24 public peace;

25 G. "recognizance" means any obligation of record

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1 entered into before a court requiring the accused to appear at
2 all appropriate times or forfeit any bail and be subject to
3 criminal penalty for failure to appear;

4 H. "release on personal recognizance" or "release
5 on own recognizance" means the release of a defendant without
6 bail, bail bond or sureties upon the defendant's promise to
7 appear at all appropriate times;

8 I. "rules of civil procedure" means rules of civil
9 procedure for the district courts of the state of New Mexico,
10 as may be amended from time to time;

11 J. "rules of criminal procedure" means rules of
12 criminal procedure for the district courts, magistrate courts
13 and municipal courts adopted by the New Mexico supreme court,
14 as may be amended from time to time;

15 K. "misdemeanor" means any offense for which the
16 authorized penalty upon conviction is imprisonment in excess of
17 six months but less than one year; and

18 L. "petty misdemeanor" means any offense so
19 designated by law or if upon conviction a sentence of
20 imprisonment for six months or less is authorized."

21 **SECTION 12.** Section 35-6-3 NMSA 1978 (being Laws 1968,
22 Chapter 62, Section 94, as amended) is amended to read:

23 "35-6-3. MAGISTRATE COSTS--ADVANCE PAYMENT.--

24 A. Except for parties granted free process because
25 of indigency, any party filing any civil action or requesting

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1 services from the magistrate court shall pay in advance the
2 costs required by law to be collected by magistrates.

3 B. Any person filing a complaint in a criminal
4 action in the magistrate court shall pay in advance the costs
5 required by law to be collected by magistrates, except that no
6 costs shall be collected from a person filing a complaint in a
7 criminal action alleging domestic violence or from a campus
8 security officer, a municipal police officer, an Indian tribal
9 or pueblo law enforcement officer, a commissioned certified
10 reserve officer or [~~from~~] a full-time, salaried county or state
11 law enforcement officer filing the complaint."

12 SECTION 13. Section 41-4-1 NMSA 1978 (being Laws 1976,
13 Chapter 58, Section 1, as amended) is amended to read:

14 "41-4-1. SHORT TITLE.--~~[Sections 41-4-1 through 41-4-27]~~
15 Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort
16 Claims Act"."

17 SECTION 14. Section 41-4-3 NMSA 1978 (being Laws 1976,
18 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,
19 Section 2 and by Laws 2009, Chapter 129, Section 2 and also by
20 Laws 2009, Chapter 249, Section 2) is amended to read:

21 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

22 A. "board" means the risk management advisory
23 board;

24 B. "governmental entity" means the state or any
25 local public body as defined in Subsections C and H of this

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1 section;

2 C. "local public body" means all political
3 subdivisions of the state and their agencies, instrumentalities
4 and institutions and all water and natural gas associations
5 organized pursuant to Chapter 3, Article 28 NMSA 1978;

6 D. "law enforcement officer" means a full-time
7 salaried public employee of a governmental entity, or a
8 certified part-time salaried police officer employed by a
9 governmental entity, or a certified reserve officer
10 commissioned by a governmental entity, whose principal duties
11 under law are to hold in custody any person accused of a
12 criminal offense, to maintain public order or to make arrests
13 for crimes, or members of the national guard when called to
14 active duty by the governor;

15 E. "maintenance" does not include:

16 (1) conduct involved in the issuance of a
17 permit, driver's license or other official authorization to use
18 the roads or highways of the state in a particular manner; or

19 (2) an activity or event relating to a public
20 building or public housing project that was not foreseeable;

21 F. "public employee" means an officer, employee or
22 servant of a governmental entity, excluding independent
23 contractors except for individuals defined in Paragraphs (7),
24 (8), (10), (14) and (17) of this subsection, or of a
25 corporation organized pursuant to the Educational Assistance

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1 Act, the Small Business Investment Act or the Mortgage Finance
2 Authority Act or a licensed health care provider, who has no
3 medical liability insurance, providing voluntary services as
4 defined in Paragraph (16) of this subsection and including:

5 (1) elected or appointed officials;

6 (2) law enforcement officers;

7 (3) persons acting on behalf or in service of
8 a governmental entity in any official capacity, whether with or
9 without compensation;

10 (4) licensed foster parents providing care for
11 children in the custody of the human services department,
12 corrections department or department of health, but not
13 including foster parents certified by a licensed child
14 placement agency;

15 (5) members of state or local selection panels
16 established pursuant to the Adult Community Corrections Act;

17 (6) members of state or local selection panels
18 established pursuant to the Juvenile Community Corrections Act;

19 (7) licensed medical, psychological or dental
20 arts practitioners providing services to the corrections
21 department pursuant to contract;

22 (8) members of the board of directors of the
23 New Mexico medical insurance pool;

24 (9) individuals who are members of medical
25 review boards, committees or panels established by the

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1 educational retirement board or the retirement board of the
2 public employees retirement association;

3 (10) licensed medical, psychological or dental
4 arts practitioners providing services to the children, youth
5 and families department pursuant to contract;

6 (11) members of the board of directors of the
7 New Mexico educational assistance foundation;

8 (12) members of the board of directors of the
9 New Mexico student loan guarantee corporation;

10 (13) members of the New Mexico mortgage
11 finance authority;

12 (14) volunteers, employees and board members
13 of court-appointed special advocate programs;

14 (15) members of the board of directors of the
15 small business investment corporation;

16 (16) health care providers licensed in New
17 Mexico who render voluntary health care services without
18 compensation in accordance with rules promulgated by the
19 secretary of health. The rules shall include requirements for
20 the types of locations at which the services are rendered, the
21 allowed scope of practice and measures to ensure quality of
22 care; and

23 (17) an individual while participating in the
24 state's adaptive driving program and only while using a
25 special-use state vehicle for evaluation and training purposes

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1 in that program;

2 G. "scope of duty" means performing any duties that
3 a public employee is requested, required or authorized to
4 perform by the governmental entity, regardless of the time and
5 place of performance; and

6 H. "state" or "state agency" means the state of New
7 Mexico or any of its branches, agencies, departments, boards,
8 instrumentalities or institutions."

9 SECTION 15. Section 66-8-124 NMSA 1978 (being Laws 1961,
10 Chapter 213, Section 3, as amended) is amended to read:

11 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM.--

12 A. No person shall be arrested for violating the
13 Motor Vehicle Code or other law relating to motor vehicles
14 punishable as a misdemeanor except by a commissioned salaried
15 peace officer or a commissioned certified reserve officer who,
16 at the time of arrest, is wearing a uniform clearly indicating
17 the peace officer's official status.

18 B. Notwithstanding the provisions of Subsection A
19 of this section, a municipality may provide by ordinance that
20 uniformed private security guards may be commissioned by the
21 local police agency to issue parking citations for violations
22 of clearly and properly marked fire zones and access zones for
23 persons with significant mobility limitation. Prior to the
24 commissioning of any security guard, the employer of the
25 security guard shall agree in writing with the local police

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1 agency to the commissioning of the employer's security guard.
2 The employer of any security guard commissioned under the
3 provisions of this section shall be liable for the actions of
4 that security guard in carrying out the security guard's duties
5 pursuant to that commission. Notwithstanding the provisions of
6 the Tort Claims Act, private security guards commissioned under
7 this section shall not be deemed public employees under that
8 act."

9 SECTION 16. Section 66-8-125 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 533) is amended to read:

11 "66-8-125. ARREST WITHOUT WARRANT.--

12 A. Members of the New Mexico state police, sheriffs
13 and their salaried deputies, [~~and~~] members of any municipal
14 police force and commissioned certified reserve officers may
15 arrest without warrant any person:

16 (1) present at the scene of a motor vehicle
17 accident;

18 (2) on a highway when charged with theft of a
19 motor vehicle; or

20 (3) charged with crime in another
21 jurisdiction, upon receipt of a message giving the name or a
22 reasonably accurate description of the person wanted, the crime
23 alleged and a statement [~~he~~] that the person is likely to flee
24 the jurisdiction of [~~the~~] this state.

25 B. To arrest without warrant, the arresting officer

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1 must have reasonable grounds, based on personal investigation,
2 which may include information from eyewitnesses, to believe the
3 person arrested has committed a crime.

4 C. Members of the New Mexico state police, sheriffs
5 and their salaried deputies, ~~[and]~~ members of any municipal
6 police force and commissioned certified reserve officers may
7 not make ~~[arrest]~~ arrests for traffic violations if not in
8 uniform; however, nothing in this section shall be construed to
9 prohibit the arrest, without warrant, by a peace officer of any
10 person when probable cause exists to believe that a felony
11 crime has been committed or in non-traffic cases."

12 SECTION 17. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2011.