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HOUSE MEMORIAL 87

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Emily Kane

A MEMORIAL

REQUESTING THE GOVERNOR'S COMMISSION ON DISABILITY TO FORM A  
TASK FORCE TO ENSURE THAT NEW MEXICO'S 2014 ALL HAZARD  
EMERGENCY OPERATIONS PLAN COMPLIES WITH TITLE II OF THE FEDERAL  
AMERICANS WITH DISABILITIES ACT OF 1990 AND TO IDENTIFY  
BARRIERS TO COMPLIANCE OR DEFICIENCIES IN THE 2014 PLAN, IF  
ANY.

WHEREAS, the aftermath of hurricane Sandy caused  
widespread flooding and power outages in New York City for  
days, stranding people with disabilities who were unable to  
leave their buildings unassisted or who were unable to access  
public transportation to escape to safety; and

WHEREAS, according to a federal court judge in Manhattan,  
New York City has done an outstanding job in planning for and  
responding to emergencies and disasters, but through benign

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1 neglect has violated the Americans with Disabilities Act of  
2 1990; and

3 WHEREAS, the same federal court judge has granted class  
4 action status to plaintiffs representing people with  
5 disabilities who claim that New York City violated the rights  
6 of approximately nine hundred thousand of its residents by  
7 failing to develop evacuation plans for people with  
8 disabilities in high-rise buildings; and

9 WHEREAS, in May 2013, the United States attorney for  
10 Manhattan filed a statement of interest in that proceeding,  
11 asserting that New York City's emergency management plans  
12 violate the Americans with Disabilities Act of 1990 because the  
13 plans do not adequately protect the rights of persons with  
14 disabilities; and

15 WHEREAS, federal regulations made final on September 15,  
16 2010 implementing Title II of the Americans with Disabilities  
17 Act of 1990 are codified at 28 Code of Federal Regulations part  
18 35; and

19 WHEREAS, these federal regulations provide that no person  
20 with a disability shall be excluded from participation in or be  
21 denied the benefits of the services, programs or activities of  
22 a public entity or be subjected to discrimination by a public  
23 entity; and

24 WHEREAS, under these federal regulations, a "public  
25 entity" includes a state or local government or department,

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1 agency, special purpose district or other instrumentality of a  
2 state, states or local government; and

3 WHEREAS, according to federal guidance, states and local  
4 governments must comply with Title II of the Americans with  
5 Disabilities Act of 1990 in their emergency and disaster-  
6 related programs; and

7 WHEREAS, the most current version of New Mexico's all  
8 hazard emergency operations plan posted on the web site of the  
9 homeland security and emergency management department is dated  
10 2007, which date is before the Americans with Disabilities Act  
11 of 1990 amendments that require states and local governments to  
12 comply with Title II of the act in their emergency and  
13 disaster-related programs; and

14 WHEREAS, the 2007 plan establishes the New Mexico  
15 emergency operations system that organizes the state's response  
16 to emergencies and disasters while providing for the safety and  
17 welfare of its residents, establishing lines of authority,  
18 responsibilities and organizational relationships and  
19 formalizing how actions will be coordinated among state,  
20 federal and local governments; and

21 WHEREAS, the 2007 plan outlines specific procedures that  
22 reflect operational priorities, including life, safety, health,  
23 environmental protection, restoration of essential utilities,  
24 restoration of essential functions and coordination among all  
25 levels of government; and

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1           WHEREAS, the 2007 plan establishes nine planning areas for  
2           evacuations and mass care, and as of 2007, these nine planning  
3           areas contained the following populations of persons over the  
4           age of five years with disabilities:

5                   A. middle Rio Grande valley/greater Albuquerque  
6           metro planning area, one hundred twenty-eight thousand four  
7           hundred;

8                   B. north central mountains planning area, thirty-  
9           eight thousand four hundred;

10                  C. four corners planning area, twenty-one thousand  
11           eighty;

12                  D. west central planning area, twenty-three  
13           thousand nine;

14                  E. lower Rio Grande valley and southwest planning  
15           area, forty-eight thousand six hundred forty-six;

16                  F. south central mountains planning area, fourteen  
17           thousand seven hundred fifteen;

18                  G. southeast planning area, thirty-three thousand  
19           nine hundred;

20                  H. eastern plains planning area, nineteen thousand  
21           one hundred twenty-six; and

22                  I. northeast highlands and plains planning area,  
23           eleven thousand two hundred seventy; and

24           WHEREAS, according to the 2007 plan, local government  
25           provides for the evacuation of threatened or affected segments

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1 of the population in an emergency or disaster within its  
2 jurisdiction and its capabilities; and

3 WHEREAS, according to the 2007 plan, the decision to  
4 evacuate or shelter in place is made after initial evaluation  
5 by local officials, and in rare circumstances by the governor,  
6 by invoking the Riot Control Act or martial law, but there are  
7 no legal means for a mayor or county executive to order a  
8 mandatory evacuation; and

9 WHEREAS, New Mexico's 2007 all hazard emergency operations  
10 plan was revised in 2009, also before the promulgation of  
11 regulations to implement changes in the Americans with  
12 Disabilities Act Amendments Act of 2008 (P.L. 110-325) that  
13 prohibit a public entity from discriminating against those  
14 persons with a disability in the provision of services,  
15 programs or activities by a public entity; and

16 WHEREAS, a revised 2014 plan is awaiting signature;

17 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF  
18 REPRESENTATIVES OF THE STATE OF NEW MEXICO that the governor's  
19 commission on disability be requested to convene a task force  
20 to review the state's 2014 all hazard emergency operations plan  
21 to ensure that it complies with Title II of the Americans with  
22 Disabilities Act of 1990 and to identify barriers to compliance  
23 or deficiencies in the 2014 plan, if any; and

24 BE IT FURTHER RESOLVED that should the task force  
25 determine that the 2014 plan is not in compliance with Title II

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1 of the Americans with Disabilities Act of 1990, the task force  
2 make such recommendations as necessary to bring the state's  
3 2014 plan into compliance; and

4 BE IT FURTHER RESOLVED that the task force include  
5 representatives from the homeland security and emergency  
6 management department, the department of public safety, the  
7 vocational rehabilitation division of the public education  
8 department, the bureau of health emergency management of the  
9 department of health, the aging and long-term services  
10 department, the Indian affairs department, the governor's  
11 commission on disability, the developmental disabilities  
12 planning council, the commission for deaf and hard-of-hearing  
13 persons, the commission for the blind, the public regulation  
14 commission, the state fire marshal, the office of the state  
15 engineer, at least two rural counties and one class A county  
16 and at least two tribes or pueblos; and

17 BE IT FURTHER RESOLVED that the task force report its  
18 findings to the interim disabilities concerns subcommittee of  
19 the legislative health and human services committee by October  
20 1, 2014; and

21 BE IT FURTHER RESOLVED that copies of this memorial be  
22 transmitted to the:

23 A. secretaries of homeland security and emergency  
24 management, public safety, public education, health, aging and  
25 long-term services and Indian affairs;

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