

AN ACT

RELATING TO PUBLIC SAFETY; CREATING THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT; PROVIDING POWERS AND DUTIES; CHANGING THE SHORT TITLES OF CERTAIN ACTS.

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

Section 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Homeland Security and Emergency Management Department Act".

Section 2. PURPOSE.--The purpose of the Homeland Security and Emergency Management Department Act is to establish a department to:

A. consolidate and coordinate homeland security and emergency management functions to provide comprehensive and coordinated preparedness, mitigation, prevention, protection, response and recovery for emergencies and disasters, regardless of cause, and acts of terrorism;

B. act as the central primary coordinating agency for the state and its political subdivisions in response to emergencies, disasters and acts of terrorism; and

C. act as the conduit for federal assistance and cooperation in response to emergencies, disasters and acts of terrorism.

Section 3. DEFINITIONS.--As used in the Homeland Security and Emergency Management Department Act:

A. "department" means the homeland security and emergency management department; and

B. "state director" means the state director of homeland security and emergency management.

Section 4. HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT--CREATED--POWERS AND DUTIES.--

A. The "homeland security and emergency management department" is created in the executive branch. The department is not a cabinet department. The chief administrative and executive officer of the department is the "state director of homeland security and emergency management", who shall be appointed by the governor and hold office at the pleasure of the governor.

B. The state director is responsible to the governor for the operation of the department. It is the state director's duty to manage all operations of the department and to administer and enforce the laws with which the state director or the department is charged.

C. To perform the state director's duties, the state director has every power expressly enumerated in the laws, whether granted to the state director or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the state director's authority by statute. In accordance with these provisions, the state director shall:

(1) except as otherwise provided in the Homeland Security and Emergency Management Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

(2) delegate authority to subordinates as the state director deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the state director deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the state director's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose administration or execution the state director is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of

services to the residents of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies; and

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the state director.

D. The state director may apply for and receive, with the governor's approval, in the name of the department

any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

E. The state director may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the state director, unless otherwise provided by statute. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the state director or a hearing officer designated by the state director. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules shall be filed in accordance with the State Rules Act.

Section 5. DEPARTMENT DUTIES.--The department shall:

A. coordinate the homeland security and emergency management efforts of all state and local government agencies, as well as enlist cooperation from private entities such as health care providers;

B. apply for and accept federal funds for homeland security, administer the funds and develop criteria to allocate grants to local governments, tribes, state agencies and other qualified entities;

C. act as liaison between federal, state and local agencies to effect the improved sharing of counterterrorism intelligence;

D. provide information to the general public and to private businesses that is essential to ensuring their safety and security and provide the governor with timely information relating to emergencies, disasters and acts of terrorism or terrorist threats;

E. establish security standards for state facilities and for protection of their occupants and develop plans for the continuity of state government operations in the event of a threat or act of terrorism or other natural or man-made disaster;

F. identify the state's critical infrastructures and assist public and private entities with developing plans and procedures designed to implement the protective actions

necessary to continue operations;

G. coordinate state agency and local government plans for prevention, preparedness and response with a focus on an all-hazards approach;

H. coordinate law enforcement counterterrorism prevention, preparedness and response training on a statewide basis, including training for emergency responders, government officials, health care providers and others as appropriate;

I. work with emergency response and emergency management programs and provide assistance in developing and conducting terrorism response exercises for emergency responders, government officials, health care providers and others;

J. coordinate law enforcement's and emergency responders' response to an act of terrorism or terrorist threat;

K. develop and maintain a statewide plan and strategy to manage and allocate federal grant funds required to provide the state's emergency response community with the equipment necessary to respond to an act of terrorism involving a weapon of mass destruction; and

L. perform such other duties relating to homeland security as may be assigned by the governor.

Section 6. COOPERATION WITH FEDERAL GOVERNMENT--
AUTHORITY OF STATE DIRECTOR--SINGLE STATE AGENCY STATUS.--

A. The department is authorized to cooperate with the federal government in the administration of homeland security and emergency management programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The department may enter into agreements with agencies of the federal government to implement homeland security and emergency management programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor may by appropriate order designate the department as the single state agency for the administration of any homeland security or emergency management program when that designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order. Whether or not a federal condition exists, the governor may designate the department as the single state agency for the administration of any homeland security or emergency management program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

Section 7. Section 9-19-4 NMSA 1978 (being Laws 1987, Chapter 254, Section 4, as amended) is amended to read:

"9-19-4. DEPARTMENT ESTABLISHED.--There is created in

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the executive branch the "department of public safety". The department shall be a cabinet department and shall consist of, but not be limited to, five program divisions, an administrative division and an information technology division as follows:

- A. the New Mexico state police division;
- B. the special investigations division;
- C. the training and recruiting division;
- D. the technical support division;
- E. the administrative services division;
- F. the motor transportation division; and
- G. the information technology division."

Section 8. Section 9-19-7 NMSA 1978 (being Laws 1987, Chapter 254, Section 7, as amended) is amended to read:

"9-19-7. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

A. The organizational units of the department and the officers of those units specified by law shall have all the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-19-6 NMSA 1978. The department shall have access to all records, data

and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

B. The New Mexico state police division shall consist of the commissioned officers and civilian personnel, including all communications equipment operators, of the New Mexico state police uniform division and the commissioned officers and civilian personnel of the New Mexico state police criminal division and such other personnel as may be assigned by the secretary or by the governor pursuant to an executive order as authorized in the Department of Public Safety Act.

C. The special investigations division shall consist of the enforcement personnel of the department of alcoholic beverage control and such other personnel as may be assigned by the secretary or by the governor pursuant to an executive order as authorized in the Department of Public Safety Act. The division is responsible for the enforcement of the Bingo and Raffle Act and the Liquor Control Act.

D. The technical support division shall consist of functions such as communications, crime laboratory and records.

E. The training and recruiting division shall consist of the personnel of the New Mexico law enforcement academy, the New Mexico state police training division and all other training personnel and functions of the department as

the secretary may transfer to this division.

F. The administrative services division shall consist of the administrative services and services divisions of the New Mexico state police and those administrative support personnel of the other existing departments, divisions or offices as the secretary deems necessary."

Section 9. Section 12-10-1 NMSA 1978 (being Laws 1959, Chapter 190, Section 1, as amended) is amended to read:

"12-10-1. SHORT TITLE.--Sections 12-10-1 through 12-10-10 NMSA 1978 may be cited as the "All Hazard Emergency Management Act"."

Section 10. Section 12-10-2 NMSA 1978 (being Laws 1959, Chapter 190, Section 2, as amended) is amended to read:

"12-10-2. PURPOSE.--The purpose of the All Hazard Emergency Management Act is to:

A. authorize the creation of local offices of emergency management in the political subdivisions of the state;

B. confer upon the governor and upon the governing bodies of the state all hazard emergency management powers;

C. provide an emergency operations plan for the protection of life and property adequate to cope with disasters resulting from acts of war or sabotage or from natural or man-made causes other than acts of war;

D. provide for coordination of all hazard

emergency management functions of this state with the comparable functions of the federal government and other states and localities and of private agencies;

E. initiate programs to render aid in the emergency restoration of facilities, utilities and other installations essential to the safety and general welfare of the public; and

F. provide for assistance and care for persons displaced, left homeless or otherwise victims of disaster or war conditions."

Section 11. Section 12-10-3 NMSA 1978 (being Laws 1969, Chapter 33, Section 1, as amended) is amended to read:

"12-10-3. EMERGENCY PLANNING AND COORDINATION.--The state director of homeland security and emergency management shall be responsible for carrying out the program for all hazard emergency management authorized by law and shall serve as the governor's authorized representative at the discretion of the governor. The state director shall direct and coordinate the all hazard emergency management activities of all state departments, agencies and political subdivisions and shall maintain liaison with and cooperate with all hazard emergency management agencies and organizations of other states and of the federal government."

Section 12. Section 12-10-4 NMSA 1978 (being Laws 1959, Chapter 190, Section 5, as amended) is amended to read:

"12-10-4. ALL HAZARD EMERGENCY MANAGEMENT--POWERS OF THE GOVERNOR.--

A. The governor shall have general direction and control of the activities of the homeland security and emergency management department and shall be responsible for carrying out the provisions of the All Hazard Emergency Management Act and, in the event of any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state, shall exercise direction and control over any and all state forces and resources engaged in emergency operations or related all hazard emergency management functions within the state.

B. In carrying out the provisions of the All Hazard Emergency Management Act, the governor is authorized to:

(1) cooperate with the federal government and agree to carry out all hazard emergency management responsibilities delegated in accordance with existing federal laws and policies and cooperate with other states and with private agencies in all matters relating to the all hazard emergency management of the state and nation;

(2) issue, amend or rescind the necessary orders, rules and procedures to carry out the provisions of the All Hazard Emergency Management Act;

(3) provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control, including the provision, on a temporary, emergency basis, of lodging, sheltering, health care, food, transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare;

(4) prepare a comprehensive emergency operations plan and program and to integrate the state emergency operations plan and program with the emergency operations plans and programs of the federal government and other states and to coordinate the preparation of emergency operations plans and programs by the political subdivisions of this state;

(5) procure supplies and equipment, to institute training programs and public information programs and to take all necessary preparatory actions, including the partial or full mobilization of state and local government forces and resources in advance of actual disaster, to ensure the furnishing of adequately trained and equipped emergency forces of government and auxiliary personnel to cope with disasters resulting from enemy attack or other causes; and

(6) enter into mutual aid agreements with other states and to coordinate mutual aid agreements between

political subdivisions of the state."

Section 13. Section 12-10-5 NMSA 1978 (being Laws 1959, Chapter 190, Section 6, as amended) is amended to read:

"12-10-5. LOCAL EMERGENCY MANAGEMENT.--The governing bodies of the political subdivisions of the state are responsible for the all hazard emergency management of their respective jurisdictions. Each political subdivision is authorized to establish, by ordinance or resolution, a local office of emergency management as an agency of the local government and responsible to the governing body, in accordance with the state emergency operations plan and program. Every local coordinator of emergency management shall be appointed by the governing body, subject to the approval of the state director of homeland security and emergency management, and the local coordinator shall have direct responsibility for carrying out the all hazard emergency management program of the political subdivision. The state director shall coordinate the emergency management activities of all local governmental departments and agencies and shall maintain liaison with and cooperate with emergency management agencies and organizations of other political subdivisions and of the state government. Each local organization shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized."

Section 14. Section 12-10-6 NMSA 1978 (being Laws 1959, Chapter 190, Section 7, as amended) is amended to read:

"12-10-6. MUTUAL AID AGREEMENTS.--Each political subdivision may, in cooperation with other public and private agencies within the state, enter into mutual aid agreements for reciprocal emergency management aid and assistance. The agreements shall be consistent with the state emergency operations plan, and in time of emergency it shall be the duty of each local emergency management organization to render assistance within its capabilities and in accordance with the provisions of the program and plan promulgated by the homeland security and emergency management department."

Section 15. Section 12-10-7 NMSA 1978 (being Laws 1959, Chapter 190, Section 8, as amended) is amended to read:

"12-10-7. AUTHORITY TO MAKE APPROPRIATIONS AND ACCEPT AID.--

A. Each political subdivision of the state shall have the power to make appropriations in the manner prescribed by law, and subject to the limitations of the law, for the payment of expenses of emergency management.

B. Whenever the federal government or any agency or officer thereof shall offer to the state or any political subdivision thereof services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of emergency management, the state, acting through the governor,

or the political subdivision, acting with the consent of the governor, may accept the offer and may authorize any officer of the state or of the political subdivision to receive the aid and assistance.

C. Whenever any private person, firm or corporation shall offer to the state or to any political subdivision thereof any aid or assistance for emergency management, the state or the political subdivision shall be authorized to accept the aid or assistance, subject to the provisions of this section."

Section 16. Section 12-10-8 NMSA 1978 (being Laws 1963, Chapter 193, Section 1, as amended) is amended to read:

"12-10-8. CIVIL LIABILITY--LIMITED.--Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege or otherwise permits the designation or use of the whole or any part of the person's real estate or premises for the purpose of sheltering persons during an actual or impending enemy attack or other disaster shall, together with the person's successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any person on or about the real estate or premises or for the loss of or damage to the property of such person, providing the premises have been approved either in whole or in part by the proper all hazard emergency management authorities for such purpose."

Section 17. Section 12-10-9 NMSA 1978 (being Laws 1959, Chapter 190, Section 9, as amended) is amended to read:

"12-10-9. EXISTING SERVICES AND FACILITIES TO BE USED BY AGENCY.--The governor, the homeland security and emergency management department and the governing bodies of the political subdivisions of the state are directed to use, in carrying out the provisions of the All Hazard Emergency Management Act, the services, equipment, supplies and facilities of existing departments, offices and agencies of the state and its political subdivisions to the maximum extent practicable, and the officers and personnel of all departments, offices and agencies of the state and its political subdivisions are directed to cooperate with and extend their services and facilities to the governor or to the department or to the local coordinators of all hazard emergency management throughout the state upon request."

Section 18. Section 12-10-10 NMSA 1978 (being Laws 1959, Chapter 190, Section 10, as amended) is amended to read:

"12-10-10. ENFORCEMENT OF EXECUTIVE ORDERS AND RULES.--

A. It is the duty of all political subdivisions of the state and their coordinators of the all hazard emergency management programs appointed pursuant to the provisions of the All Hazard Emergency Management Act to comply with and enforce all executive orders and rules made by the governor or under the governor's authority pursuant to law.

B. Political subdivisions shall meet all state and federal requirements before becoming eligible to participate in state and federal all hazard emergency management assistance programs. They must comply with all state and federal rules and procedures and shall be removed from participation in the assistance programs by the state director of homeland security and emergency management for failure to comply with the rules and procedures or to maintain their eligibility in accordance with prescribed requirements."

Section 19. Section 12-10-11 NMSA 1978 (being Laws 2002, Chapter 83, Section 2) is amended to read:

"12-10-11. OUT-OF-STATE LICENSE HOLDERS--POWERS--DUTIES.--During an emergency, a person who holds a license, certificate or other permit that is issued by a state or territory of the United States and that evidences the meeting of qualifications for professional, mechanical or other skills may be credentialed, if appropriate and approved by the department of health or the homeland security and emergency management department, to render aid involving those skills to meet an emergency, subject to limitations and conditions as the governor may prescribe by executive order or otherwise. A person shall be considered a public employee for the purposes of the Tort Claims Act when approved to perform those duties."

Section 20. Section 12-10-12 NMSA 1978 (being Laws 2002, Chapter 83, Section 3) is amended to read:

"12-10-12. APPLICATION.--The provisions of Section 12-10-11 NMSA 1978 apply to a person from any state or territory whether or not a party to the Emergency Management Assistance Compact."

Section 21. Section 12-10-13 NMSA 1978 (being Laws 2002, Chapter 83, Section 4) is amended to read:

"12-10-13. IN-STATE LICENSE HOLDERS--POWERS--DUTIES.-- During an emergency, a person who holds a license, certificate or other permit that is issued by the state and that evidences the meeting of qualifications for professional, mechanical or other skills may be credentialed, if appropriate and approved by the department of health or the homeland security and emergency management department, to render aid involving those skills to meet a declared emergency, and shall be considered a public employee for the purposes of the Tort Claims Act when approved to perform those duties."

Section 22. Section 12-10A-1 NMSA 1978 (being Laws 2003, Chapter 218, Section 1) is amended to read:

"12-10A-1. SHORT TITLE.--Chapter 12, Article 10A NMSA 1978 may be cited as the "Public Health Emergency Response Act"."

Section 23. Section 12-10A-3 NMSA 1978 (being Laws 2003, Chapter 218, Section 3) is amended to read:

"12-10A-3. DEFINITIONS.--As used in the Public Health Emergency Response Act:

A. "attorney general" means the New Mexico attorney general;

B. "court" means the district court for the judicial district where a public health emergency is occurring, the district court for Santa Fe county or, in the event that a district court cannot adequately provide services, a district court designated by the New Mexico supreme court;

C. "director" or "state director" means the state director of homeland security and emergency management or the state director's designee;

D. "health care supplies" means medication, durable medical equipment, instruments, linens or any other material that the state may need to use in a public health emergency, including supplies for preparedness, mitigation and recovery;

E. "health facility" means:

(1) a facility licensed by the state pursuant to the provisions of the Public Health Act;

(2) a nonfederal facility or building, whether public or private, for-profit or nonprofit, that is used, operated or designed to provide health services, medical treatment, nursing services, rehabilitative services or preventive care;

(3) a federal facility, when the appropriate

federal entity provides its consent; or

(4) the following properties when they are used for, or in connection with, health-related activities:

- (a) laboratories;
- (b) research facilities;
- (c) pharmacies;
- (d) laundry facilities;
- (e) health personnel training and lodging facilities;
- (f) patient, guest and health personnel food service facilities; and
- (g) offices or office buildings used by persons engaged in health care professions or services;

F. "isolation" means the physical separation for possible medical care of persons who are infected or who are reasonably believed to be infected with a threatening communicable disease or potential threatening communicable disease from non-isolated persons, to protect against the transmission of the threatening communicable disease to non-isolated persons;

G. "public health emergency" means the occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm to the population of New Mexico or

any portion thereof;

H. "public health official" means the secretary of health or the secretary's designee, including a qualified public individual or group or a qualified private individual or group, as determined by the secretary of health;

I. "quarantine" means the precautionary physical separation of persons who have or may have been exposed to a threatening communicable disease or a potentially threatening communicable disease and who do not show signs or symptoms of a threatening communicable disease, from non-quarantined persons, to protect against the transmission of the disease to non-quarantined persons;

J. "secretary of health" means the secretary or the secretary's designee;

K. "secretary of public safety" means the secretary or the secretary's designee; and

L. "threatening communicable disease" means a disease that causes death or great bodily harm that passes from one person to another and for which there are no means by which the public can reasonably avoid the risk of contracting the disease. "Threatening communicable disease" does not include acquired immune deficiency syndrome or other infections caused by the human immunodeficiency virus."

Section 24. Section 12-10A-17 NMSA 1978 (being Laws 2003, Chapter 218, Section 17) is amended to read:

"12-10A-17. RULEMAKING.--The secretary of public safety, the secretary of health, the state director and, where appropriate, other affected state agencies in consultation with the secretaries and state director, shall promulgate and implement rules that are reasonable and necessary to implement and effectuate the Public Health Emergency Response Act."

Section 25. Section 12-12-17 NMSA 1978 (being Laws 1983, Chapter 80, Section 1, as amended) is amended to read:

"12-12-17. SHORT TITLE.--Sections 12-12-17 through 12-12-30 NMSA 1978 may be cited as the "Hazardous Materials Emergency Response Act"."

Section 26. Section 12-12-18 NMSA 1978 (being Laws 1983, Chapter 80, Section 2) is amended to read:

"12-12-18. FINDINGS AND PURPOSE.--

A. The legislature finds that the use of hazardous materials, including radioactive materials, and the transportation of such materials through or within New Mexico occurs on a daily basis, and, no matter how safety-conscious facilities, users, shippers or carriers are, accidents may occur. In the event of an accident, resource requirements may be beyond the capability of local governments, and the state must be prepared to respond quickly and effectively to protect the health and safety of its citizens and the environment.

B. It is the purpose of the Hazardous Materials Emergency Response Act to:

(1) provide that adequate hazardous materials emergency management capability exists in the state to protect the health and safety of New Mexico citizens and the environment;

(2) delineate those state agencies that are responsible for responding to an accident and providing for the control and management of such an accident and to provide for the cooperation of other state agencies and local governments in emergency management; and

(3) provide for the formulation of a comprehensive hazardous materials emergency response plan that will be distributed statewide and that will be complied with by all persons who may be involved in responding to an accident."

Section 27. Section 12-12-19 NMSA 1978 (being Laws 1983, Chapter 80, Section 3, as amended by Laws 1997, Chapter 152, Section 1 and also by Laws 1997, Chapter 231, Section 1) is amended to read:

"12-12-19. DEFINITIONS.--As used in the Hazardous Materials Emergency Response Act:

A. "accident" means an event involving hazardous materials that may cause injury to persons or damage to property or release hazardous materials to the environment;

B. "administrator" means the hazardous materials emergency response administrator;

C. "board" means the hazardous materials safety board;

D. "chief" means the chief of the New Mexico state police;

E. "commission" means the state emergency response commission;

F. "department" means the homeland security and emergency management department;

G. "emergency management" means the ability to prepare for, respond to, mitigate, recover and restore the scene of an institutional, industrial, transportation or other accident;

H. "first responder" means the first law enforcement officer or other public service provider with a radio-equipped vehicle to arrive at the scene of an accident;

I. "hazardous materials" means hazardous substances, radioactive materials or a combination of hazardous substances and radioactive materials;

J. "hazardous substances" means flammable solids, semisolids, liquids or gases; poisons; corrosives; explosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents, but does not include radioactive materials;

K. "orphan hazardous materials" means hazardous substances, radioactive materials, a combination of hazardous substances and radioactive materials or substances used in the

manufacture of controlled substances in violation of the Controlled Substances Act where an owner of the substances or materials cannot be identified;

L. "plan" means the statewide hazardous materials emergency response plan;

M. "radioactive materials" means any material or combination of materials that spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material are not considered to be radioactive materials unless determined to be so by the hazardous and radioactive materials bureau of the water and waste management division of the department of environment for purposes of emergency response pursuant to the Hazardous Materials Emergency Response Act;

N. "responsible state agency" means an agency designated in Subsection D of Section 12-12-21 NMSA 1978 with responsibility for managing a certain type of accident or performing certain functions at the scene of such accident; and

O. "secretary" or "state director" means the state director of homeland security and emergency management."

Section 28. Section 12-12-20 NMSA 1978 (being Laws 1983, Chapter 80, Section 4, as amended) is amended to read:

"12-12-20. STATE RESPONSIBILITY FOR MANAGEMENT OF ACCIDENTS--IMMUNITY FROM LIABILITY--COOPERATIVE AGREEMENTS--

PRIVATE PROPERTY.--

A. The state director shall have final authority to administer the provisions of the Hazardous Materials Emergency Response Act.

B. As between state and local governments, the state government has the primary responsibility for the management of an accident, and the local government in whose jurisdiction the accident occurs shall assist the state in its management of the accident.

C. Nothing in the Hazardous Materials Emergency Response Act shall be construed as a waiver or alteration of the immunity from liability granted under the Tort Claims Act or as a waiver of any other immunity or privilege under law.

D. The state, through the state director or state director's designee, may enter into cooperative agreements with county and municipal governments for the management of accidents based on the severity of the accident and the resources of the local government. The plan shall set forth the criteria for determining when an accident may be managed by the local government in whose jurisdiction the accident occurred.

E. The state director shall support emergency response capabilities by assisting local and state responders in the acquisition of equipment, training and hazardous materials information.

F. The state, through the state director or state director's designee, may enter into cooperative agreements with the federal government, Indian tribes and pueblos and bordering states for assistance in the management of accidents.

G. Whenever an accident appears imminent or has occurred, employees or authorized persons of responsible state agencies as defined in Section 12-12-21 NMSA 1978 are authorized to enter upon any premises for the purpose of determining whether it is necessary for emergency management procedures to be implemented. The state on-scene coordinator or a responsible state agency may take full control and custody of the premises for the purpose of managing the accident."

Section 29. Section 12-12-21 NMSA 1978 (being Laws 1983, Chapter 80, Section 5, as amended) is amended to read:

"12-12-21. STATE POLICE EMERGENCY RESPONSE OFFICER--
PROCEDURE FOR NOTIFICATION--COOPERATION OF OTHER STATE
AGENCIES AND LOCAL GOVERNMENTS.--

A. The state director, in addition to having final authority to administer the provisions of the Hazardous Materials Emergency Response Act, shall be responsible for central coordination and communication in the event of an accident.

B. The chief shall designate one or more persons

to be known as "state police emergency response officers". A state police emergency response officer shall be trained in accident evaluation and emergency response and shall be available to answer an emergency response call from the first responder.

C. In the event of an accident, if the first responder is a law enforcement officer, the officer shall immediately notify the state police district emergency response officer in the officer's area, who shall in turn immediately notify the state police emergency response center. If the first responder is a person with radio capability tied into the radio communications bureau of the information systems division of the general services department, the person shall immediately notify Santa Fe control, who shall in turn immediately notify the state police emergency response center. The state police emergency response center shall:

(1) evaluate and determine the scope of the accident based on information provided by the first responder;

(2) instruct the first responder on how to proceed at the accident scene;

(3) immediately notify the state director and the appropriate responsible state agency and advise it of the necessary response;

(4) notify the sheriff or chief of police in whose jurisdiction the accident occurred; and

(5) coordinate field communications and summon additional resources requested by the emergency management team.

D. The responsible state agencies shall be:

(1) the New Mexico state police division of the department of public safety for coordination, law enforcement and traffic and crowd control;

(2) the department of environment for assistance with accidents involving hazardous materials or hazardous substances;

(3) the state fire marshal's office for assistance with any accident involving hazardous materials;

(4) the emergency medical services bureau of the department of health for assistance with accidents involving casualties;

(5) the homeland security and emergency management department and the department of military affairs for assistance with accidents that require the evacuation of the vicinity of the accident or the use of the national guard of New Mexico; and

(6) the department of transportation for assistance with road closures, designating alternate routes and related services.

E. Other state agencies and local governments shall assist the responsible state agencies when requested to

do so.

F. Any driver of a vehicle carrying hazardous materials involved in an accident that may cause injury to persons or property or any owner, shipper or carrier of hazardous materials involved in an accident who has knowledge of such accident or any owner or person in charge of any building, premises or facility where such an accident occurs shall immediately notify the New Mexico state police division of the department of public safety by the quickest means of communication available."

Section 30. Section 12-12-23 NMSA 1978 (being Laws 1984, Chapter 41, Section 6, as amended) is amended to read:

"12-12-23. HAZARDOUS MATERIALS EMERGENCY RESPONSE ADMINISTRATOR--CREATED--DUTIES.--The position of "hazardous materials emergency response administrator" is created within the homeland security and emergency management department. The state director shall assign the administrator's duties."

Section 31. Section 12-12-27 NMSA 1978 (being Laws 1983, Chapter 80, Section 10) is amended to read:

"12-12-27. CLEAN-UP.--Nothing in the Hazardous Materials Emergency Response Act shall be construed to relieve hazardous materials owners, shippers or carriers of their responsibilities and liability in the event of an accident. Such persons shall assist the state as requested in responding to an accident and are responsible for restoring the scene of

the accident to the satisfaction of the state."

Section 32. Section 74-4E-1 NMSA 1978 (being Laws 1989, Chapter 149, Section 1) is amended to read:

"74-4E-1. SHORT TITLE.--Chapter 74, Article 4E NMSA 1978 may be cited as the "Hazardous Chemicals Information Act"."

Section 33. Section 74-4E-3 NMSA 1978 (being Laws 1989, Chapter 149, Section 3) is amended to read:

"74-4E-3. DEFINITIONS.--As used in the Hazardous Chemicals Information Act:

A. "commission" means the state emergency response commission;

B. "department" means the homeland security and emergency management department;

C. "emergency responder" means any law enforcement officer, firefighter, medical services professional or other person trained and equipped to respond to hazardous chemical releases;

D. "hazardous chemical" means any hazardous chemical, extremely hazardous substance, toxic chemical or hazardous material as defined by Title 3;

E. "facility owner or operator" means any individual, trust, firm, joint stock company, corporation, partnership, association, state agency, municipality or county having legal control or authority over buildings, equipment,

structures and other stationary items that are located on a single site or on contiguous or adjacent sites. For the purposes of Section 74-4E-5 NMSA 1978, the term includes owners or operators of motor vehicles, rolling stock and aircraft;

F. "local emergency planning committee" means any local group appointed by the commission to undertake chemical release contingency planning;

G. "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of any hazardous chemical, extremely hazardous substance or toxic chemical. "Release" includes the abandonment or discarding of barrels, containers and other closed receptacles; and

H. "Title 3" means the federal Emergency Planning and Community Right-to-Know Act of 1986."

Section 34. Section 74-4E-4 NMSA 1978 (being Laws 1989, Chapter 149, Section 4) is amended to read:

"74-4E-4. COMMISSION CREATED--MEMBERSHIP--TERMS--
DUTIES--IMMUNITY GRANTED.--

A. The "state emergency response commission" is created. The commission shall consist of seven members who shall be qualified voters of the state of New Mexico. All members shall be appointed by the governor. Among the members appointed, there shall be representatives of private industry,

federal facilities, public health and public safety.

Appointments shall be made for four-year terms to expire on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointments. Annually, the governor shall designate, from among the members, a chair of the commission.

B. The commission shall:

(1) exercise supervisory authority to implement Title 3 within New Mexico;

(2) prescribe all reporting forms required by the Hazardous Chemicals Information Act;

(3) provide direction to the hazardous materials safety board;

(4) report periodically to the radioactive and hazardous materials committee; and

(5) report annually to the governor and the legislature.

C. The commission may solicit and accept grants from federal or private sources for undertakings that further the purpose of the Hazardous Chemicals Information Act and may make contracts necessary to carry out the purpose of that act.

D. Commission members shall not vote by proxy. A majority of the members constitute a quorum for the conduct of business.

E. Commission members shall not be paid, but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act.

F. Immunity from tort liability for emergency response actions, including planning or preparation therefor, is granted to the state, its subdivisions and all their agencies, officers, agents and employees. Any waiver of immunity from tort liability granted under the Tort Claims Act shall not be applicable to disaster or emergency response or planning."

Section 35. TEMPORARY PROVISION--TRANSFER OF PERSONNEL AND PROPERTY--CONTRACTUAL OBLIGATIONS--STATUTORY REFERENCES.--

A. On the effective date of this act, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the office of homeland security or the homeland security advisor of the governor's office are transferred to the homeland security and emergency management department.

B. On the effective date of this act, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the office of emergency management and the homeland security and emergency management program of the department of public safety are transferred to the homeland security and emergency management department.

C. On the effective date of this act, contractual obligations of the office of homeland security or the homeland security advisor of the governor's office or of the technical and emergency support division of the department of public safety or the department of public safety pertaining to the homeland security and emergency management program shall be binding on the homeland security and emergency management department.

D. On the effective date of this act, all references in the law to the office of homeland security or the homeland security advisor of the governor's office shall be deemed to be references to the homeland security and emergency management department.

E. On the effective date of this act, references in law to the State Civil Emergency Preparedness Act shall be deemed to be references to the All Hazard Emergency Management Act. All references in law to the Emergency Management Act shall be deemed to be references to the Hazardous Materials Emergency Response Act.

Section 36. REPEAL.--Section 12-12-22 NMSA 1978 (being Laws 1983, Chapter 80, Section 6, as amended) is repealed.

Section 37. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. _____