

AN ACT

RELATING TO HOMELAND SECURITY AND EMERGENCY MANAGEMENT;
CHANGING THE TITLE OF THE STATE DIRECTOR OF HOMELAND SECURITY
AND EMERGENCY MANAGEMENT; MAKING THE HOMELAND SECURITY AND
EMERGENCY MANAGEMENT DEPARTMENT A CABINET DEPARTMENT;
DESIGNATING THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT
DEPARTMENT TO COORDINATE THE NATIONAL FLOOD INSURANCE PROGRAM;
REMOVING HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT
VEHICLES FROM THE CUSTODY OF THE TRANSPORTATION SERVICES
DIVISION OF THE GENERAL SERVICES DEPARTMENT; DECLARING AN
EMERGENCY.

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

Section 1. Section 3-18-7 NMSA 1978 (being Laws 1975,
Chapter 14, Section 1, as amended) is amended to read:

"3-18-7. ADDITIONAL COUNTY AND MUNICIPAL POWERS--FLOOD
AND MUDSLIDE HAZARD AREAS--FLOOD PLAIN PERMITS--LAND USE
CONTROL--JURISDICTION--AGREEMENT.--

A. For the purpose of minimizing or eliminating
damage from floods or mudslides in federal emergency
management agency and locally designated flood-prone areas and
for the purpose of promoting health, safety and the general
welfare, a county or municipality with identified flood or
mudslide hazard areas shall by ordinance:

- (1) designate and regulate flood plain areas

having special flood or mudslide hazards;

(2) prescribe standards for constructing, altering, installing or repairing buildings and other improvements under a permit system within a designated flood or mudslide hazard area;

(3) require review by the local flood plain manager for development within a designated flood or mudslide hazard area; provided that final decisions are approved by the local governing body;

(4) review subdivision proposals and other new developments within a designated flood or mudslide hazard area to ensure that:

(a) all such proposals are consistent with the need to minimize flood damage;

(b) all public utilities and facilities such as sewer, gas, electrical and water systems are designed to minimize or eliminate flood damage; and

(c) adequate drainage is provided so as to reduce exposure to flood hazards;

(5) require new or replacement water supply systems or sanitary sewage systems within a designated flood or mudslide hazard area to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal systems to be located so as to avoid

impairment of them or contamination from them during flooding;
and

(6) designate and regulate floodways for the passage of flood waters.

B. A flood plain ordinance adopted pursuant to this section shall substantially conform to the minimum standards prescribed by the federal insurance administration, regulation 1910 issued pursuant to Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 575, all as amended.

C. A county or municipality that enacts a flood plain ordinance shall designate a person, certified pursuant to the state-certified flood plain manager program, as the flood plain manager to administer the flood plain ordinance.

D. A county or municipality that has areas designated by the federal emergency management agency and the county or municipality as flood-prone shall participate in the national flood insurance program.

E. A county or municipality shall have exclusive jurisdiction over flood plain permits issued under its respective flood plain ordinance in accordance with this section and so long as all structures built in flood plains are subject to inspection and approval pursuant to the Construction Industries Licensing Act. Notwithstanding Section 3-18-6 NMSA 1978, when a municipality adopts a flood

plain ordinance pursuant to Paragraph (2) of Subsection A of this section, the municipality's jurisdiction under the flood plain ordinance may take precedence over a respective county flood plain ordinance within the municipality's boundary and within the municipality's subdividing and platting jurisdiction.

F. A county or municipality shall designate flood plain areas having special flood or mudslide hazards in substantial conformity with areas identified as flood- or mudslide-prone by the federal insurance administration pursuant to the national flood insurance program and may designate areas as flood- or mudslide-prone that may not be so identified by the federal insurance administration.

G. A municipality or county adopting a flood plain ordinance pursuant to this section may enter into reciprocal agreements with any agency of the state, other political subdivisions or the federal government in order to effectively carry out the provisions of this section.

H. The homeland security and emergency management department is designated as the state coordinating agency for the national flood insurance program and may assist counties or municipalities when requested by a county or municipality to provide technical advice and assistance."

Section 2. Section 9-28-2 NMSA 1978 (being Laws 2007, Chapter 291, Section 2) is amended to read:

"9-28-2. PURPOSE--CRIMINAL JUSTICE LAW ENFORCEMENT AGENCY.--

A. The purpose of the Homeland Security and Emergency Management Department Act is to establish a department to:

(1) 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 or threats of terrorism;

(2) act as the central primary coordinating agency for the state and its political subdivisions in response to emergencies, disasters and acts or threats of terrorism; and

(3) act as the conduit for federal assistance and cooperation in response to emergencies, disasters and acts or threats of terrorism.

B. The department shall be considered a criminal justice law enforcement agency in order to accomplish the purposes provided in Subsection A of this section."

Section 3. Section 9-28-3 NMSA 1978 (being Laws 2007, Chapter 291, Section 3) is amended to read:

"9-28-3. DEFINITIONS.--As used in the Homeland Security and Emergency Management Department Act:

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

B. "secretary" means the secretary of homeland security and emergency management."

Section 4. Section 9-28-4 NMSA 1978 (being Laws 2007, Chapter 291, Section 4) is amended to read:

"9-28-4. 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 a cabinet department. The chief administrative and executive officer of the department is the "secretary of homeland security and emergency management", who shall be appointed by the governor with the consent of the senate and hold office at the pleasure of the governor.

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

C. To perform the secretary's duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's

authority by statute. In accordance with these provisions, the secretary 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 secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary 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 secretary'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 secretary 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 secretary.

D. The secretary 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 secretary 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 secretary, 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 secretary or a hearing officer designated by the secretary. 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. Section 9-28-6 NMSA 1978 (being Laws 2007, Chapter 291, Section 6) is amended to read:

"9-28-6. COOPERATION WITH FEDERAL GOVERNMENT--AUTHORITY OF SECRETARY--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 6. Section 15-8-6 NMSA 1978 (being Laws 1994, Chapter 119, Section 6, as amended) is amended to read:

"15-8-6. STATE VEHICLES--USE--MARKINGS--STATE GOVERNMENT PLATES.--

A. The division shall adopt rules governing the use of vehicles used by state agencies, including driver requirements and responsibilities, under what circumstances someone can be assigned a state vehicle on a permanent or semi-permanent basis and when custody of a state vehicle can be vested in another state agency.

B. The division may determine that it is impractical to retain custody of certain state vehicles, and it may provide that custody reside in another state agency in the following cases:

(1) the state vehicle is used for emergency or law enforcement purposes; or

(2) the state vehicle is a department of transportation, energy, minerals and natural resources department, department of game and fish or homeland security and emergency management department passenger vehicle, truck or tractor or heavy road equipment.

C. Except as provided in Subsections E and F of

this section, all state vehicles shall be marked as state vehicles. Each side of the vehicle shall be marked, in letters not less than two inches in height, with the following designation of ownership: "State of New Mexico,..... Department" or "State of New Mexico Department of" and naming the department using the vehicle.

D. Except as provided in Subsections E and F of this section, all state vehicles shall have specially designed government registration plates.

E. Only state vehicles used for legitimate undercover law enforcement purposes are exempt from the requirements of Subsections C and D of this section. All other state vehicles owned or in the custody of state agencies that have law enforcement functions shall be marked and have state government registration plates.

F. A state agency may seek custody of state vehicles as an exception to Subsection B of this section or an exemption to the provisions of Subsection C of this section by making a written request to the director, specifying the reasons for the proposed custody or exemption. The director may approve the custody or exemption, in writing, indicating the duration and any conditions of the custody or exemption."

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
