

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

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

WHEREAS, in May 2013, the United States attorney for

Manhattan filed a statement of interest in that proceeding, asserting that New York City's emergency management plans violate the Americans with Disabilities Act of 1990 because the plans do not adequately protect the rights of persons with disabilities; and

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

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

WHEREAS, under these federal regulations, a "public entity" includes a state or local government or department, agency, special purpose district or other instrumentality of a state, states or local government; and

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

WHEREAS, the most current version of New Mexico's all hazard emergency operations plan posted on the web site of the homeland security and emergency management department is dated

2007, which date is before the Americans with Disabilities Act of 1990 amendments that require states and local governments to comply with Title II of the act in their emergency and disaster-related programs; and

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, according to the 2007 plan, local government provides for the evacuation of threatened or affected segments of the population in an emergency or disaster within its jurisdiction and its capabilities; and

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

WHEREAS, New Mexico's 2007 all hazard emergency

operations plan was revised in 2009, also before the promulgation of regulations to implement changes in the Americans with Disabilities Act Amendments Act of 2008 (P.L. 110-325) that prohibit a public entity from discriminating against those persons with a disability in the provision of services, programs or activities by a public entity; and

WHEREAS, a revised 2014 plan is awaiting signature;

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

BE IT FURTHER RESOLVED that should the task force determine that the 2014 plan is not in compliance with Title II of the Americans with Disabilities Act of 1990, the task force make such recommendations as necessary to bring the state's 2014 plan into compliance; and

BE IT FURTHER RESOLVED that the task force include representatives from the homeland security and emergency management department, the department of public safety, the vocational rehabilitation division of the public education department, the bureau of health emergency management of the department of health, the aging and long-term services

department, the Indian affairs department, the governor's commission on disability, the developmental disabilities planning council, the commission for deaf and hard-of-hearing persons, the commission for the blind, the public regulation commission, the state fire marshal, the office of the state engineer, at least two rural counties and one class A county and at least two tribes or pueblos; and

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

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

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

B. chairs of the governor's commission on disability, the developmental disabilities planning council, the commission for deaf and hard-of-hearing persons and the commission for the blind;

C. chair of the public regulation commission;

D. state fire marshal and the office of state engineer;

E. governor of every tribe and pueblo; and

F. emergency manager of every county.