BILL

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

INTRODUCED BY

DISCUSSION DRAFT

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; MERGING THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT WITH THE DEPARTMENT OF PUBLIC SAFETY; TRANSFERRING THE ADMINISTRATION OF THE ENHANCED 911 SERVICE PROGRAM TO THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY; REQUIRING THE DEPARTMENT OF INFORMATION TECHNOLOGY TO PROVIDE INFRASTRUCTURE FOR ENHANCED 911 SERVICES; TRANSFERRING THE FIRE MARSHAL DIVISION OF THE PUBLIC REGULATION COMMISSION TO THE DEPARTMENT OF PUBLIC SAFETY; PROVIDING FOR TRANSFERS OF FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES; REPEALING THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAWS IN LAWS 2003, LAWS 2007 AND LAWS 2009.

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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

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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

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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

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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 division of the department of public safety 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 9-15-48 NMSA 1978 (being Laws 2003, Chapter 166, Section 1 and Laws 2003, Chapter 170, Section 1, as amended) is amended to read:

"9-15-48. OFFICE OF MILITARY BASE PLANNING AND SUPPORT CREATED--DUTIES.--

A. The "office of military base planning and support" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the office.

B. The [~~governor's homeland security adviser~~] director of the homeland security and emergency management division of the department of public safety shall appoint a director of the office of military base planning and support.

C. The director of the office of military base planning and support shall:

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(1) employ, under the authorization of the [~~governor's homeland security adviser~~] director of the homeland security and emergency management division, the staff necessary to carry out the work of the office of military base planning and support and the military base planning commission;

(2) support the commission;

(3) inform the governor and the [~~governor's homeland security adviser~~] director of the homeland security and emergency management division about issues impacting the military bases in the state, including infrastructure requirements, environmental needs, military force structure possibilities, tax implications, property considerations and issues requiring coordination and support from other state agencies;

(4) serve as a liaison with the community organizations whose purpose is to support the long-term viability of the military bases;

(5) communicate with the staff of the state's congressional delegation; and

(6) identify issues, prepare information and provide for presentations necessary for the commission to carry out its duties."

SECTION 3. Section 9-15-49 NMSA 1978 (being Laws 2003, Chapter 166, Section 2 and Laws 2003, Chapter 170, Section 2, as amended) is amended to read:

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"9-15-49. MILITARY BASE PLANNING COMMISSION CREATED--COMPOSITION.--

A. The "military base planning commission" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the commission.

B. The commission consists of seventeen members, fifteen of which are appointed by the governor with the advice and consent of the senate. The commission shall include the lieutenant governor, the [~~governor's homeland security adviser~~] director of the homeland security and emergency management division of the department of public safety and appropriate representatives from the counties, or adjoining counties, in which military bases are located.

C. The governor shall appoint a chair from among the members of the commission. The commission shall meet at the call of the chair and shall meet not less than quarterly. Members of the commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act.

D. Notwithstanding the provisions of the Open Meetings Act, meetings of the commission shall be closed to the public when proprietary alternative New Mexico military base realignment or closure strategies or any information regarding relocation of military units is discussed.

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E. Information developed or obtained by the commission that pertains to proprietary commission strategies or related to the relocation of military units shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act."

SECTION 4. Section 9-19-3 NMSA 1978 (being Laws 1987, Chapter 254, Section 3, as amended) is amended to read:

"9-19-3. PURPOSE.--The purpose of the Department of Public Safety Act is to establish a single, unified department to consolidate state law enforcement and safety and homeland security and emergency management functions in order to provide better management, real coordination and more efficient use of state resources and manpower in responding to New Mexico's public safety and homeland security and emergency management needs and problems and to improve the professionalism of the state's law enforcement and investigative functions and personnel and the state's homeland security and emergency management functions and personnel."

SECTION 5. 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 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~~] seven program divisions, an administrative division and an information technology division

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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;

H. the homeland security and emergency management division; and

I. the fire marshal division."

SECTION 6. 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

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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 alcohol and gaming division of the regulation and licensing 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 New Mexico 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.

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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~~] department.

G. The homeland security and emergency management division shall consist of functions formerly exercised by the homeland security and emergency management department, including:

(1) coordinating the homeland security and emergency management efforts of all state and local government agencies, as well as enlisting cooperation from private entities such as health care providers;

(2) applying for and accepting federal funds for homeland security, administering the funds and developing criteria to allocate grants to local governments, tribes, state agencies and other qualified entities;

(3) acting as a liaison between federal, state and local agencies to effect the improved sharing of counterterrorism intelligence;

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

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(5) establishing security standards for state facilities and for protection of their occupants and developing plans for the continuity of state government operations in the event of a threat or act of terrorism or other man-made or natural disaster;

(6) identifying the state's critical infrastructures and assisting public and private entities with developing plans and procedures designed to implement the protective actions necessary to continue operations;

(7) coordinating state agency and local government plans for prevention, preparedness and response with a focus on an all-hazards approach;

(8) coordinating 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;

(9) working with emergency response and emergency management programs and providing assistance in developing and conducting terrorism response exercises for emergency responders, government officials, health care providers and others;

(10) coordinating law enforcement's and emergency responders' response to an act of terrorism or a terrorist threat;

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(11) developing and maintaining 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;

(12) administering the state's enhanced 911 service program; and

(13) performing such other duties relating to homeland security as may be assigned by the governor or the secretary."

SECTION 7. A new section of the Department of Public Safety Act is enacted to read:

"[NEW MATERIAL] COOPERATION WITH FEDERAL GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE AGENCY STATUS.--

A. The homeland security and emergency management division 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 division 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.

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B. The governor may by appropriate order designate the homeland security and emergency management division or 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 division or 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 8. 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 division of the department of public safety 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

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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

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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 9. 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

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security and emergency management division of the department of public safety."

SECTION 10. 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 division of the department of public safety 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~~] division or to the local coordinators of all hazard emergency management throughout the state upon request."

SECTION 11. Section 12-10-11 NMSA 1978 (being Laws 2002, Chapter 83, Section 2, as amended) 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

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may be credentialed, if appropriate and approved by the department of health or the homeland security and emergency management division of the department of public safety, 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 12. Section 12-10-13 NMSA 1978 (being Laws 2002, Chapter 83, Section 4, as amended) 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 division of the department of public safety, 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 13. Section 12-10A-3 NMSA 1978 (being Laws 2003, Chapter 218, Section 3, as amended) is amended to read:

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

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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 the homeland security and emergency management division of the department of public safety 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

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(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;

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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 of health or the secretary's designee;

K. "secretary of public safety" means the secretary of public safety 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 14. Section 12-10B-3 NMSA 1978 (being Laws 2006, Chapter 97, Section 3) is amended to read:

"12-10B-3. INTRASTATE MUTUAL AID COMMITTEE CREATED--

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MEMBERSHIP--MEETINGS--DUTIES--EXPENSES.--

A. The "intrastate mutual aid committee" is created. The committee shall consist of eleven members appointed by the governor, including a representative of the department of public safety and the [~~governor's homeland security advisor~~] director of the homeland security and emergency management division of the department of public safety who shall be a permanent member and the presiding officer of the committee. The members shall represent emergency management and response disciplines, political subdivisions and, if participating, Indian nations, tribes or pueblos. Appointments shall be made for terms expiring four years from the date of appointment. The committee shall elect from among its members a vice-presiding officer and any other officers the committee deems appropriate. The committee shall meet at least annually and may meet at the call of the presiding officer or as otherwise called by seven of its members. The committee shall be attached to the department of public safety for administrative purposes only.

B. The committee shall:

(1) review the progress and status of intrastate mutual aid;

(2) assist in developing methods to track and evaluate activation of the system;

(3) examine issues facing member jurisdictions

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in the implementation of intrastate mutual aid;

(4) develop, adopt and disseminate comprehensive guidelines and procedures that address the following:

(a) projected or anticipated costs of establishing and maintaining the system;

(b) checklists for requesting and providing intrastate mutual aid;

(c) record keeping for member jurisdictions; and

(d) procedures for reimbursing the actual and legitimate expenses of a member jurisdiction that responds to a request for aid through the system; and

(5) adopt other guidelines or procedures considered necessary by the committee to implement an effective and efficient system.

C. Members of the committee shall not be paid for participating in committee meetings and activities; however:

(1) members representing the state, its agencies or political subdivisions shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act paid by their sponsors;

(2) members representing the private sector shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act paid by the department of public

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safety; and

(3) members representing Indian nations, tribes or pueblos may be compensated or reimbursed as provided by the tribal government they represent."

SECTION 15. Section 12-10D-2 NMSA 1978 (being Laws 2009, Chapter 111, Section 2) is amended to read:

"12-10D-2. DEFINITIONS.--As used in the Emergency Communications Interoperability Act:

A. "department" or "division" means the homeland security and emergency management division of the department of public safety;

B. "first responder" means a public safety employee or volunteer whose duties include responding rapidly to an emergency, including but not limited to:

(1) a law enforcement officer;

(2) a firefighter or certified volunteer firefighter; and

(3) an emergency medical services provider;

C. "infrastructure equipment" means the underlying fixed equipment required to establish interoperable communications between radio systems used by local, state, tribal and federal agencies and first responders; and

D. "interoperability" means coordination of critical information communication systems or networks, including radio and emergency coordination information

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equipment, that are consistently operable with all relevant local, state, tribal and federal agencies and first responders."

SECTION 16. Section 12-10D-3 NMSA 1978 (being Laws 2009, Chapter 111, Section 3) is amended to read:

"12-10D-3. INTEROPERABILITY PLANNING COMMISSION--CREATED.--

A. The "interoperability planning commission" is created and administratively attached to the department.

B. The interoperability planning commission is a permanent advisory commission created to advise and support the department on emergency response and homeland security activities relating to interoperability, the obtaining of funding and the use of available funding.

C. The commission consists of twelve members, including:

(1) the lieutenant governor;

(2) the [~~homeland security advisor~~] director of the division;

(3) the secretary of information technology or the secretary's designee;

(4) the adjutant general or a representative from the department of military affairs;

(5) the secretary of energy, minerals and natural resources or the secretary's designee;

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(6) the state fire marshal or the fire marshal's designee;

(7) the secretary of Indian affairs or the secretary's designee;

(8) the secretary of transportation or the secretary's designee;

(9) the secretary of health or the secretary's designee;

(10) the secretary of public safety or the secretary's designee;

(11) the executive director of the New Mexico municipal league or the executive director's designee; and

(12) the executive director of the New Mexico association of counties or the executive director's designee.

D. The commission shall appoint a chair and vice chair from among its members. The commission shall meet at the call of the chair but no less than two times each year.

E. Members of the commission, or their designees, who are not supported by public money may be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act, but shall not receive any other compensation, perquisite or allowance."

SECTION 17. Section 12-12-19 NMSA 1978 (being Laws 1983, Chapter 80, Section 3, as amended) is amended to read:

"12-12-19. DEFINITIONS.--As used in the Hazardous

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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" or "division" means the homeland security and emergency management division of the department of public safety;

G. "director" means the director of the division;

[~~G.~~] H. "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.~~] I. "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.~~] J. "hazardous materials" means hazardous substances, radioactive materials or a combination of hazardous

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substances and radioactive materials;

[~~J.~~] K. "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.~~] L. "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.~~] M. "plan" means the statewide hazardous materials emergency response plan;

[~~M.~~] N. "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.~~] O. "responsible state agency" means an agency designated in Subsection D of Section 12-12-21 NMSA 1978 with

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responsibility for managing a certain type of accident or performing certain functions at the scene of such accident; and

[~~O.~~] P. "secretary" or "state director" means the [~~state~~] director of [~~homeland security and emergency management~~] the division."

SECTION 18. Section 12-12-21 NMSA 1978 (being Laws 1983, Chapter 80, Section 5, as amended by Laws 2007, Chapter 290, Section 11 and by Laws 2007, Chapter 291, Section 29) 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

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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 protocol or reporting structure with the department of information technology, the person shall immediately notify Santa Fe control, [~~who~~] which 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;

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

(3) the [~~state~~] fire [~~marshal's office~~] marshal division of the department of public safety for assistance with any accident involving hazardous materials;

(4) the office of injury prevention [~~and emergency medical services bureau~~] of the public health division of the department of health for assistance with accidents involving casualties;

(5) the homeland security and emergency management division of the department of public safety 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

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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 19. 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~~] division. The [~~state~~] director shall assign the administrator's duties."

SECTION 20. Section 12-12A-2 NMSA 1978 (being Laws 2008, Chapter 47, Section 2) is amended to read:

"12-12A-2. DEFINITIONS.--As used in the Uniform Emergency Volunteer Health Practitioners Act:

A. "disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(1) is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or the [~~homeland security and emergency management department~~] division; or

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(2) regularly plans and conducts its activities in coordination with an agency of the federal government or the [~~homeland security and emergency management department~~] division;

B. "division" means the homeland security and emergency management division of the department of public safety;

[~~B.~~] C. "emergency" means an event or condition that is an emergency, disaster, public health emergency or similar event or condition pursuant to the laws of this state;

[~~C.~~] D. "emergency declaration" means a declaration of emergency issued by a person authorized to do so pursuant to the laws of this state;

[~~D.~~] E. "Emergency Management Assistance Compact" means the interstate compact approved by congress by Public Law No. 104-321, 110 Stat. 3877 and codified at Sections 12-10-14 and 12-10-15 NMSA 1978;

[~~E.~~] F. "entity" means a person other than an individual;

[~~F.~~] G. "health facility" means an entity licensed pursuant to the laws of this or another state to provide health or veterinary services;

[~~G.~~] H. "health practitioner" means an individual licensed pursuant to the laws of this or another state to provide health or veterinary services;

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[~~H.~~] I. "health services" means the provision of treatment, care, advice or guidance, or other services or supplies, related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(1) the following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care; and

(b) counseling, assessment, procedures or other services;

(2) the sale or dispensing of a drug, a device, equipment or another item to an individual in accordance with a prescription; and

(3) funeral, cremation, cemetery or other mortuary services;

[~~I.~~] J. "host entity" means an entity operating in this state that uses volunteer health practitioners to respond to an emergency;

[~~J.~~] K. "license" means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. "License" includes authorization pursuant to the laws of this state to an individual to provide health or veterinary services based upon a national

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certification issued by a public or private entity;

[~~K.~~] L. "person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity;

[~~L.~~] M. "scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority;

[~~M.~~] N. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

[~~N.~~] O. "veterinary services" means the provision of treatment, care, advice or guidance, or other services or supplies, related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(1) the diagnosis, treatment or prevention of an animal disease, injury or other physical or mental condition by the prescription, administration or dispensing of a vaccine, medicine, surgery or therapy;

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(2) the use of a procedure for reproductive management; and

(3) the monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans; and

[~~O.~~] P. "volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. "Volunteer health practitioner" does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect."

SECTION 21. Section 12-12A-4 NMSA 1978 (being Laws 2008, Chapter 47, Section 4) is amended to read:

"12-12A-4. REGULATION OF SERVICES DURING EMERGENCY.--

A. While an emergency declaration is in effect, the [~~homeland security and emergency management department~~] division may limit, restrict or otherwise regulate:

(1) the duration of practice by volunteer health practitioners;

(2) the geographical areas in which volunteer

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health practitioners may practice;

(3) the types of volunteer health practitioners who may practice; and

(4) any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

B. An order issued pursuant to Subsection A of this section may take effect immediately, without prior notice or comment.

C. A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

(1) consult and coordinate its activities with the [~~homeland security and emergency management department~~] division to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) comply with any laws other than the Uniform Emergency Volunteer Health Practitioners Act relating to the management of emergency health or veterinary services, including the Emergency Medical Services Act and the All Hazard Emergency Management Act."

SECTION 22. Section 12-12A-5 NMSA 1978 (being Laws 2008, Chapter 47, Section 5) is amended to read:

"12-12A-5. VOLUNTEER HEALTH PRACTITIONER REGISTRATION SYSTEMS.--

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A. To qualify as a volunteer health practitioner registration system, a system shall:

(1) accept applications for the registration of volunteer health practitioners before or during an emergency;

(2) include information about the licensure and good standing of health practitioners that is accessible by authorized persons;

(3) be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided pursuant to the Uniform Emergency Volunteer Health Practitioners Act; and

(4) meet one of the following conditions:

(a) be an emergency system for advance registration of volunteer health care practitioners established by a state and funded through the health resources services administration pursuant to Section 319I of the federal Public Health Service Act, 42 U.S.C. Section 247d-7b, as amended;

(b) be a local unit consisting of trained and equipped emergency response, public health and medical personnel formed pursuant to Section 2801 of the Public Health Service Act, 42 U.S.C. Section 300hh, as amended;

(c) be operated by a: 1) disaster relief organization; 2) licensing board; 3) national or

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regional association of licensing boards or health practitioners; 4) health facility that provides comprehensive inpatient and outpatient health care services, including a tertiary care and teaching hospital; or 5) governmental entity; or

(d) be designated by the [~~homeland security and emergency management department~~] division as a registration system for purposes of the Uniform Emergency Volunteer Health Practitioners Act.

B. While an emergency declaration is in effect, the [~~homeland security and emergency management department~~] division, a person authorized to act on behalf of the [~~homeland security and emergency management department~~] division or a host entity may confirm whether volunteer health practitioners used in this state are registered with a registration system that complies with Subsection A of this section. Confirmation is limited to obtaining identities of the volunteer health practitioners from the system and determining whether the system indicates that the volunteer health practitioners are licensed and in good standing.

C. Upon request of a person in this state authorized pursuant to Subsection B of this section or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the

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volunteer health practitioners are licensed and in good standing.

D. A host entity is not required to use the services of a volunteer health practitioner even if the volunteer health practitioner is registered with a registration system that indicates that the volunteer health practitioner is licensed and in good standing."

SECTION 23. Section 12-12A-8 NMSA 1978 (being Laws 2008, Chapter 47, Section 8) is amended to read:

"12-12A-8. PROVISION OF VOLUNTEER HEALTH OR VETERINARY SERVICES--ADMINISTRATIVE SANCTIONS.--

A. Subject to Subsections B and C of this section, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts or other laws of this state.

B. Except as otherwise provided in Subsection C of this section, the Uniform Emergency Volunteer Health Practitioners Act does not authorize a volunteer health practitioner to provide services that are outside the volunteer health practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

C. The [~~homeland security and emergency management department~~] division may modify or restrict the health or

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veterinary services that volunteer health practitioners may provide pursuant to the Uniform Emergency Volunteer Health Practitioners Act. An order pursuant to this subsection may take effect immediately, without prior notice or comment.

D. A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to the Uniform Emergency Volunteer Health Practitioners Act.

E. A volunteer health practitioner [~~does not engage~~] shall not be considered to be engaged in unauthorized practice unless the volunteer health practitioner has reason to know of any limitation, modification or restriction pursuant to the provisions of this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) the volunteer health practitioner knows that the limitation, modification or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) from all the facts and circumstances known to the volunteer health practitioner at the relevant time, a reasonable person would conclude that the limitation,

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modification or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

F. In addition to the authority granted by law of this state other than the Uniform Emergency Volunteer Health Practitioners Act to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) may impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) may impose administrative sanctions upon a health practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) shall report any administrative sanctions imposed upon a health practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

G. In determining whether to impose administrative sanctions pursuant to Subsection F of this section, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the health practitioner's scope of practice, education, training, experience and specialized

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skill."

SECTION 24. Section 12-12A-10 NMSA 1978 (being Laws 2008, Chapter 47, Section 10) is amended to read:

"12-12A-10. REGULATORY AUTHORITY.--The [~~homeland security and emergency management department~~] division may promulgate rules to implement the Uniform Emergency Volunteer Health Practitioners Act. In doing so, the [~~homeland security and emergency management department~~] division shall consult with and consider the recommendations of the entity established to coordinate the implementation of the Emergency Management Assistance Compact and shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of the Uniform Emergency Volunteer Health Practitioners Act and make the emergency response systems in the various states reasonably compatible."

SECTION 25. Section 15-8-6 NMSA 1978 (being Laws 1994, Chapter 119, Section 6, as amended by Laws 2009, Chapter 8, Section 1 and by Laws 2009, Chapter 129, Section 1 and also by Laws 2009, Chapter 250, Section 6) 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 or by other persons pursuant to Subsection G of this section, including driver requirements

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and responsibilities, under what circumstances someone can be assigned a state vehicle on a permanent or semipermanent 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 division of the department of public safety 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

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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.

G. The division shall adopt rules permitting individuals enrolled in the state's adaptive driving program to use special-use state vehicles for evaluation and training purposes in that program."

SECTION 26. Section 63-9D-3 NMSA 1978 (being Laws 1989, Chapter 25, Section 3, as amended) is amended to read:

"63-9D-3. DEFINITIONS.--As used in the Enhanced 911 Act:

A. "911 emergency surcharge" means the monthly uniform charge assessed on each access line in the state and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico;

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B. "911 service area" means the area designated by the fiscal agent or local governing body or the division to receive enhanced 911 service;

C. "access line" means a telecommunications company's line that has the capability to reach local public safety agencies by dialing 911, but does not include a line used for the provision of interexchange services or commercial mobile radio service;

D. "commercial mobile radio service" means service provided by a wireless real-time two-way voice communication device, including:

(1) radio-telephone communications used in cellular telephone service;

(2) the functional or competitive equivalent of radio-telephone communications used in cellular telephone service;

(3) a personal communications service; or

(4) a network radio access line;

E. "commercial mobile radio service provider" means a person who provides commercial mobile radio services, including a person who purchases commercial mobile radio service from a provider and resells that service;

[~~F. "commission" means the public regulation commission;~~

~~G.~~] F. "database" means information that is

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collected, formatted and disseminated and that is necessary for the functioning of the enhanced 911 system, including geographic information system (GIS) addressing and digital mapping information;

[~~H.~~] G. "department" means the taxation and revenue department;

[~~I.~~] H. "division" means the [~~local government division of the department of finance and administration~~] homeland security and emergency management division of the department of public safety;

[~~J.~~] I. "enhanced 911 system" means a landline, internet protocol or wireless system consisting of network switching equipment, database, mapping and on-premises equipment that uses the single three-digit number 911 for reporting police, fire, medical or other emergency situations, thereby enabling a caller to reach a public safety answering point to report emergencies by dialing 911, and includes the capability to:

(1) selectively route incoming 911 calls to the appropriate public safety answering point operating in a 911 service area;

(2) automatically display the name, address and telephone number of an incoming 911 call on a video monitor at the appropriate public safety answering point;

(3) provide one or more access paths for

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communications between users at different geographic locations through a network system that may be designed for voice or data, or both, and may feature limited or open access and may employ appropriate analog, digital switching, internet protocol or transmission technologies; and

(4) relay to a designated public safety answering point a 911 caller's number and base station or cell site location and the latitude and longitude of the 911 caller's location in relation to the designated public safety answering point;

[~~K.~~] J. "enhanced 911 equipment" means the public safety answering point equipment directly related to the operation of an enhanced 911 system, including automatic number identification or automatic location identification controllers and display units, printers, logging recorders and software associated with call detail recording, call center work stations, training, latitude and longitude base station or cell site location data and GIS equipment necessary to obtain and process vocational map and emergency service zone data for landline and wireless callers;

[~~L.~~] K. "equipment supplier" means a person who provides or offers to provide telecommunications or internet protocol equipment necessary for the establishment of enhanced 911 services;

[~~M.~~] L. "fiscal agent" means the local governing

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body that administers grants from the fund for a given locality or region by agreement;

[~~N.~~] M. "fund" means the enhanced 911 fund;

N. "interconnected voice over internet protocol service" means a real-time two-way voice communication service that requires:

(1) a broadband connection; and

(2) internet protocol-compatible customer premises equipment;

O. "interconnected voice over internet protocol provider" means a person who provides interconnected voice over internet protocol services;

[~~O.~~] P. "local governing body" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipal Code;

Q. "next generation 911 technology" means technology developed as part of the United States department of transportation's next generation 911 technology initiative;

R. "prepaid calling card" means any object containing an access number and authorization code that allows a consumer to use prepaid calling services;

S. "prepaid calling card provider" means a person who provides a prepaid calling card to a consumer, including a person who purchases a prepaid calling card from a provider and resells the card;

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[~~P.~~] T. "proprietary information" means customer lists, customer counts, technology descriptions or trade secrets, including the actual or development costs of individual components of an enhanced 911 system; provided that such information is designated as proprietary by the commercial mobile radio service provider, interconnected voice over internet protocol service provider, prepaid calling card provider or telecommunications company; and provided further that "proprietary information" does not include individual payments made by the division or any list of names and identifying information of subscribers who have not paid the surcharge;

[~~Q.~~] U. "public safety answering point" means a twenty-four-hour [~~local~~] communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency;

[~~R.~~] V. "subscriber" means a person who is a retail purchaser of telecommunications services, interconnected voice over internet protocol services or commercial mobile radio services that are capable of originating a 911 call;

[~~S.~~] W. "surcharge" means the 911 emergency surcharge;

[~~T.~~] X. "telecommunications company" means a person who provides wire telecommunications services that are capable

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of originating a 911 call; and

[~~U.~~] Y. "vendor" means a person that provides 911 equipment, service or network support."

SECTION 27. Section 63-9D-5 NMSA 1978 (being Laws 1989, Chapter 25, Section 5, as amended) is amended to read:

"63-9D-5. IMPOSITION OF SURCHARGE.--

A. There is imposed a 911 emergency surcharge in the amount of fifty-one cents ($.51) to be billed to each subscriber access line by a telecommunications company on each prepaid calling card purchased in New Mexico and on each active number for a commercial mobile radio service or interconnected voice over internet protocol service subscriber whose billing address is in New Mexico; provided, however, that the surcharge shall not be imposed upon subscribers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act.

B. Commercial mobile radio service providers and interconnected voice over internet protocol service providers shall be required to bill and collect the surcharge from their subscribers whose places of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, are in New Mexico. Prepaid calling card providers shall be required to bill and collect the surcharge from all persons purchasing prepaid calling cards in New Mexico. Telecommunications companies shall be required to bill and collect the surcharge from their subscribers. The surcharge required to be collected

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by the commercial mobile radio service provider, prepaid calling card provider, interconnected voice over internet protocol service provider or telecommunications company shall be added to and stated clearly and separately in the billings to the subscriber. The surcharge collected by the commercial mobile radio service provider, prepaid calling card provider, interconnected voice over internet protocol service provider or telecommunications company shall not be considered revenue [~~of the commercial mobile radio service provider or telecommunications company~~].

C. A billed subscriber is liable for payment of the 911 emergency surcharge until it has been paid to the commercial mobile radio service provider, prepaid calling card provider, interconnected voice over internet protocol service provider or telecommunications company.

D. A commercial mobile radio service provider, prepaid calling card provider, interconnected voice over internet protocol service provider or telecommunications company has no obligation to take legal action to enforce the collection of the surcharge; an action may be brought by or on behalf of the department. A commercial mobile radio service provider, prepaid calling card provider, interconnected voice over internet protocol service provider or telecommunications company, upon request and not more than once a year, shall provide to the department a list of the surcharge amounts

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uncollected, along with the names and addresses of subscribers who carry a balance that can be determined by the commercial mobile radio service provider, prepaid calling card provider, interconnected voice over internet protocol service provider or telecommunications company to be nonpayment of the surcharge. The commercial mobile radio service provider, prepaid calling card provider, interconnected voice over internet protocol service provider or telecommunications company shall not be held liable for uncollected surcharge amounts.

E. The surcharge shall commence with the first billing period of each commercial mobile radio service or telecommunications company subscriber on or [~~following~~] after July 1, 2005. The surcharge shall commence with the first billing period of each interconnected voice over internet protocol provider service subscriber on or after July 1, 2011. The surcharge shall be charged to each prepaid calling card purchaser on or after July 1, 2011."

SECTION 28. Section 63-9D-7 NMSA 1978 (being Laws 1989, Chapter 25, Section 7, as amended) is amended to read:

"63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE.--

A. The surcharge collected shall be remitted monthly to the department, which shall administer and enforce collection of the surcharge in accordance with the Tax Administration Act. The surcharge shall be remitted to the department no later than the twenty-fifth day of the month

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following the month in which the surcharge was imposed. At that time, a return for the preceding month shall be filed with the department in such form as the department and the telecommunications company, prepaid calling card provider, interconnected voice over internet protocol service provider or commercial mobile radio service provider shall agree upon. A telecommunications company, prepaid calling card provider, interconnected voice over internet protocol service provider or commercial mobile radio service provider required to file a return shall deliver the return together with a remittance of the amount of the surcharge payable to the department. The telecommunications company, prepaid calling card provider, interconnected voice over internet protocol service provider or commercial mobile radio service provider shall maintain a record of the amount of each surcharge collected pursuant to the Enhanced 911 Act. The record shall be maintained for a period of three years after the time the surcharges were collected.

B. From a remittance to the department made on or before the date it becomes due, a telecommunications company, prepaid calling card provider, interconnected voice over internet protocol service provider or commercial mobile radio service provider required to make a remittance shall be entitled to deduct and retain one percent of the collected amount or fifty dollars ($50.00), whichever is greater, as the

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administrative cost for collecting the surcharge."

SECTION 29. Section 63-9D-8 NMSA 1978 (being Laws 1989, Chapter 25, Section 8, as amended) is amended to read:

"63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--DISBURSEMENT--REPORTS TO LEGISLATURE.--

A. There is created in the state treasury a fund that shall be known as the "enhanced 911 fund". The fund shall be administered by the division.

B. All surcharges collected and remitted to the department shall be deposited in the fund.

C. Money deposited in the fund and income earned by investment of the fund are appropriated for expenditure in accordance with the Enhanced 911 Act and shall not revert to the general fund.

D. Payments shall be made from the fund to, or on behalf of, participating local governing bodies or their fiscal agents upon vouchers signed by the director of the division solely for the purpose of reimbursing local governing bodies or their fiscal agents, commercial mobile radio service providers, interconnected voice over internet protocol service providers or telecommunications companies for their costs of providing enhanced 911 service. A person who purchases commercial mobile radio services, interconnected voice over internet protocol services or telecommunications services from a commercial mobile radio service provider, interconnected voice over

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internet protocol service provider or telecommunications company for the purpose of reselling that service is not eligible for reimbursement from the fund. Money in the fund may be used for the payment of bonds issued pursuant to the Enhanced 911 Bond Act.

E. Annually, the division may expend no more than five percent of all money deposited annually in the fund for administering and coordinating activities associated with implementation of the Enhanced 911 Act.

F. Money in the fund may be awarded as grant assistance to provide enhanced 911 service and equipment upon application of local governing bodies or their fiscal agents to the division and upon approval by the state board of finance. If it is anticipated that the funds available to pay all requests for grants will be insufficient, the state board of finance may reduce the percentage of assistance to be awarded. In the event of such reduction, the state board of finance may award supplemental grants to local governing bodies that demonstrate financial hardship.

G. After requesting enhanced 911 service from a telecommunications company, interconnected voice over internet protocol service providers or commercial mobile radio service provider, a local governing body may, by ordinance or resolution, recover from the fund an amount necessary to recover the costs of providing the enhanced 911 system in its

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designated 911 service area. The division, on behalf of local governing bodies, shall directly pay or reimburse commercial mobile radio service providers; interconnected voice over internet protocol service providers and telecommunications companies for their costs of providing enhanced 911 service. If a commercial mobile radio service provider, interconnected voice over internet protocol service provider or telecommunications company does not receive payment or reimbursement for the costs of providing enhanced 911 service, the provider is not obligated to provide that service.

H. Pursuant to Section 33 of this 2011 act, money in the fund may be used by the division to provide for a statewide enhanced 911 system and for implementation of next generation 911 programs.

[~~H.~~] I. The division shall report to the legislature each session the status of the fund and whether the current level of the 911 emergency surcharge is sufficient, excessive or insufficient to fund the anticipated needs for the next year."

SECTION 30. Section 63-9D-8.1 NMSA 1978 (being Laws 1990, Chapter 87, Section 3, as amended) is amended to read:

"63-9D-8.1. DIVISION POWERS.--

A. The division may adopt reasonable rules necessary to carry out the provisions of the Enhanced 911 Act.

B. The division may fund enhanced 911 systems

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pursuant to the provisions of the Enhanced 911 Act.

C. Division powers are limited and do not include power to intervene between two vendors or restrict marketing efforts of vendors.

D. The division and the local governing body may establish 911 service areas.

E. Unless otherwise provided by law, no rule affecting any person, agency, local governing body, commercial mobile radio service provider, interconnected voice over internet protocol service provider, prepaid calling card provider or telecommunications company shall be adopted, amended or repealed without a public hearing on the proposed action before the director of the division or a hearing officer designated by the 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 or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons or agencies who have made a written request for advance notice of the hearing and to all local governing bodies, telecommunications companies,

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interconnected voice over internet protocol service providers, prepaid calling card providers and commercial mobile radio service providers.

F. All rules shall be filed in accordance with the State Rules Act."

SECTION 31. Section 63-9D-10 NMSA 1978 (being Laws 1989, Chapter 25, Section 10, as amended) is amended to read:

"63-9D-10. IMMUNITY.--Enhanced 911 systems are within the governmental powers and authorities of the local governing body or state agency in the provision of services for the public health, welfare and safety. In contracting for such services or the provisioning of an enhanced 911 system, except for willful or wanton negligence or intentional acts, the local governing body, public agency, equipment supplier, telecommunications company, commercial mobile radio service provider and interconnected voice over internet protocol service provider and their employees and agents are not liable for damages resulting from installing, maintaining or providing enhanced 911 systems or transmitting 911 calls."

SECTION 32. Section 63-9D-11 NMSA 1978 (being Laws 1989, Chapter 25, Section 11, as amended) is amended to read:

"63-9D-11. PRIVATE LISTING SUBSCRIBERS AND 911 SERVICE.--

A. Private listing subscribers waive the privacy afforded by nonlisted or nonpublished numbers only to the extent that the name and address associated with the telephone

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number may be furnished to the enhanced 911 system for call routing or for automatic retrieval of location information in response to a call initiated to 911.

B. Information regarding the identity of private listing subscribers, including names, addresses, telephone numbers or other identifying information, is not a public record and is not available for inspection.

C. Proprietary information provided by a commercial mobile radio service provider, interconnected voice over internet protocol service provider or telecommunications company is not public information and may not be released to any person without the express permission of the submitting provider, except that information may be released or published as aggregated data that does not identify the number of subscribers or identify enhanced 911 system costs attributable to an individual commercial mobile radio service provider, interconnected voice over internet protocol service provider or telecommunications company."

SECTION 33. A new section of the Enhanced 911 Act is enacted to read:

"[NEW MATERIAL] STATEWIDE ENHANCED 911 SYSTEM--NEXT GENERATION 911 PROGRAMS--DEPARTMENT OF INFORMATION TECHNOLOGY.--

A. The division shall work with the department of information technology to provide a statewide enhanced 911 system that includes next generation 911 technologies.

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B. A local governing body that controls a public safety answering point shall connect to the statewide enhanced 911 system once the statewide enhanced 911 system is fully operational.

C. The department of information technology shall provide all technical infrastructure needed for the development of a statewide enhanced 911 system, including next generation 911 technologies."

SECTION 34. Section 63-9D-13 NMSA 1978 (being Laws 1990, Chapter 61, Section 2, as amended) is amended to read:

"63-9D-13. DEFINITIONS.--As used in the Enhanced 911 Bond Act:

A. "board" means the state board of finance;

B. "division" means the [~~local government division of the department of finance and administration~~] homeland security and emergency management division of the department of public safety;

C. "enhanced 911 bonds" means the bonds authorized in the Enhanced 911 Bond Act;

D. "enhanced 911 project" means actions authorized under Section 63-9D-14 NMSA 1978 that pertain to a specific component of the enhanced 911 system; and

E. "enhanced 911 revenue" means the revenue to and the income of the enhanced 911 fund that are pledged to the payment of enhanced 911 bonds under the Enhanced 911 Bond Act."

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SECTION 35. Section 63-9D-14 NMSA 1978 (being Laws 1990, Chapter 61, Section 3, as amended) is amended to read:

"63-9D-14. ENHANCED 911 BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON ISSUANCE.--

A. In addition to any other law authorizing the board to issue revenue bonds, the board may issue enhanced 911 bonds pursuant to the Enhanced 911 Bond Act for the purposes specified in this section.

B. Enhanced 911 bonds may be issued for:

(1) acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating the enhanced 911 system, the payment of which shall be secured by enhanced 911 revenues;

(2) reimbursing a commercial mobile radio service provider, interconnected voice over internet protocol service provider or telecommunications company for its reasonable costs of providing enhanced 911 service, the payment of which shall be secured by enhanced 911 revenues; [~~or~~]

(3) reimbursing a local governing body or its fiscal agent for its reasonable costs of providing the enhanced 911 system, the payment of which shall be secured by enhanced 911 revenues; or

(4) reimbursing the division or the department of information technology for its reasonable costs of providing

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a statewide enhanced 911 system and next generation 911 programs.

C. The board may pledge irrevocably enhanced 911 revenues in the manner set forth in Subsection B of this section to the payment of the interest on and principal of enhanced 911 bonds. Any general determination by the board that expenditures are reasonably related to and constitute a part of a specified enhanced 911 project shall be conclusive if set forth in the proceedings authorizing the enhanced 911 bonds."

SECTION 36. Section 74-4E-3 NMSA 1978 (being Laws 1989, Chapter 149, Section 3, as amended) 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" or "division" means the homeland security and emergency management division of the department of public safety;

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

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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 37. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS, APPROPRIATIONS AND PROPERTY--CONTRACTUAL OBLIGATIONS--STATUTORY REFERENCES.--

A. On the effective date of this act, all functions, appropriations, money, records, furniture, equipment

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and other property of the homeland security and emergency management department and the fire marshal division of the public regulation commission shall be transferred to the department of public safety.

B. On the effective date of this act, contractual obligations of the homeland security and emergency management department and the fire marshal division of the public regulation commission are binding on the department of public safety.

C. On the effective date of this act, all references in the law to the homeland security and emergency management department shall be deemed to be references in law to the homeland security and emergency management division of the department of public safety. All references in the law to the state director of homeland security and emergency management or to the secretary of homeland security and emergency management shall be deemed to be references to the director of the homeland security and emergency management division of the department of public safety.

D. On the effective date of this act, all references in the law to the fire marshal division of the public regulation commission shall be deemed to be references in law to the fire marshal division of the department of public safety.

SECTION 38. REPEAL.--Sections 9-28-1 through 9-28-7 NMSA

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1978 (being Laws 2007, Chapter 291, Sections 1 through 6 and 35, as amended) are repealed.

SECTION 39. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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