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HOUSE BILL 38

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

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO PUBLIC SAFETY; PROVIDING FOR ENHANCED PUBLIC SAFETY  
BY PROVIDING THAT SIXTY PERCENT OF THE REVENUES FROM THE GROSS  
RECEIPTS TAX ON FIREWORKS BE DISTRIBUTED FOR THE FORESTRY  
DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES  
DEPARTMENT TO CONDUCT FIRE PREVENTION PROJECTS IN WILDLANDS OF  
THE STATE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 TO  
PROVIDE THE GOVERNOR, MUNICIPALITIES AND COUNTIES WITH  
AUTHORITY TO PROCLAIM A STATE OF EMERGENCY TO BAN OR RESTRICT  
THE SALE AND USE OF FIREWORKS IN ANY AREA WHERE THE NATIONAL  
FIRE DANGER RATING IS HIGH, VERY HIGH OR EXTREME; CREATING A  
FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the Tax Administration Act is  
enacted to read:

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1           "[NEW MATERIAL] DISTRIBUTION--GROSS RECEIPTS AND  
2 COMPENSATING TAX ACT--SALES OF FIREWORKS.--A distribution  
3 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the  
4 wildlands fire prevention fund in an amount equal to sixty  
5 percent of the net receipts attributable to the gross receipts  
6 tax less penalties and interest imposed by the Gross Receipts  
7 and Compensating Tax Act on the sale of fireworks."

8           SECTION 2. Section 7-9-4 NMSA 1978 (being Laws 1966,  
9 Chapter 47, Section 4, as amended) is amended to read:

10           "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
11 "GROSS RECEIPTS TAX".--

12           A. For the privilege of engaging in business, an  
13 excise tax equal to five and one-eighth percent of gross  
14 receipts is imposed on any person engaging in business in New  
15 Mexico.

16           B. The tax imposed by this section shall be  
17 referred to as the "gross receipts tax".

18           C. Sixty percent of the annual net revenues less  
19 penalties and interest derived from the gross receipts tax on  
20 fireworks, as defined in the Fireworks Licensing and Safety  
21 Act, shall be distributed to the wildlands fire prevention  
22 fund."

23           SECTION 3. A new section of the Forest Conservation Act  
24 is enacted to read:

25           "[NEW MATERIAL] WILDLANDS FIRE PREVENTION FUND--CREATED.--

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1           A. The "wildlands fire prevention fund" is created  
2 in the state treasury. The fund shall consist of distributions  
3 from sixty percent of the net receipts less penalties and  
4 interest collected pursuant to the Gross Receipts and  
5 Compensating Tax Act on the sale of fireworks; appropriations,  
6 gifts, grants, donations and bequests made to the fund; and  
7 reimbursements of costs incurred by the forestry division for  
8 wildlands fire prevention projects. Income from the fund shall  
9 be credited to the fund, and money in the fund shall not revert  
10 or be transferred to any other fund at the end of a fiscal  
11 year. Money in the fund is appropriated to the forestry  
12 division for the purposes of wildlands fire prevention  
13 projects. Expenditures from the fund shall be made on warrant  
14 of the secretary of finance and administration pursuant to  
15 vouchers signed by the secretary of energy, minerals and  
16 natural resources.

17           B. As used in this section, "wildlands" includes  
18 forests, bosques and brush-covered lands."

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

21           "12-10-4. ALL HAZARD EMERGENCY MANAGEMENT--POWERS OF THE  
22 GOVERNOR.--

23           A. The governor shall have general direction and  
24 control of the activities of the homeland security and  
25 emergency management department and shall be responsible for

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1 carrying out the provisions of the All Hazard Emergency  
2 Management Act and, in the event of any man-made or natural  
3 disaster causing or threatening widespread physical or economic  
4 harm that is beyond local control and requiring the resources  
5 of the state, shall exercise direction and control over any and  
6 all state forces and resources engaged in emergency operations  
7 or related all hazard emergency management functions within the  
8 state.

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

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

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

20 (3) provide those resources and services  
21 necessary to avoid or minimize economic or physical harm until  
22 a situation becomes stabilized and again under local self-  
23 support and control, including the provision, on a temporary,  
24 emergency basis, of lodging, sheltering, health care, food,  
25 transportation or shipping necessary to protect lives or public

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1 property; or for any other action necessary to protect the  
2 public health, safety and welfare;

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

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

18 (6) enter into mutual aid agreements with  
19 other states and to coordinate mutual aid agreements between  
20 political subdivisions of the state; and

21 (7) proclaim a state of emergency that  
22 temporarily bans or restricts the sale or use, or both the sale  
23 and use, of fireworks, as defined in the Fireworks Licensing  
24 and Safety Act, in an area where the fire danger rating is  
25 deemed to be high, very high or extreme, as determined by the

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1 national fire danger rating system."

2 SECTION 5. A new section of the Fireworks Licensing and  
3 Safety Act is enacted to read:

4 "[NEW MATERIAL] GOVERNOR PROCLAMATION--NATIONAL FIRE  
5 DANGER RATING SYSTEM--FIREWORKS.--Pursuant to Section 12-10-4  
6 NMSA 1978, the governor may proclaim a state of emergency that  
7 temporarily bans or restricts the sale or use, or both the sale  
8 and use, of fireworks in an area where the fire danger rating  
9 is deemed to be high, very high or extreme, as determined by  
10 the national fire danger rating system. The proclamation  
11 becomes effective immediately upon its signing by the governor,  
12 but the governor shall give public notice of its contents  
13 through the public press and other news media. The  
14 proclamation shall be effective for thirty days, and the  
15 governor may issue succeeding proclamations if conditions  
16 warrant. The proclamation shall explain restrictions on the  
17 sale and use of fireworks and the permitted sale and use of  
18 fireworks and the geographic extent of the proclamation's  
19 provisions. The proclamation may be modified or rescinded by  
20 the governor within its thirty-day period upon a finding that  
21 the fire danger rating is deemed to be less than high as  
22 determined by the national fire danger rating system. The  
23 governor shall consult with Indian nations, tribes or pueblos  
24 that include an area where the fire danger rating is deemed to  
25 be high, very high or extreme, as determined by the national

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1 fire danger rating system. The governor's proclamation may be  
2 more restrictive within that jurisdiction than restrictions  
3 imposed by a municipality or a county but shall not be less  
4 restrictive than the municipality or county."

5 SECTION 6. Section 60-2C-2 NMSA 1978 (being Laws 1989,  
6 Chapter 346, Section 2, as amended) is amended to read:

7 "60-2C-2. DEFINITIONS.--As used in the Fireworks  
8 Licensing and Safety Act:

9 A. "aerial shell" means a cylindrical or spherical  
10 cartridge containing a lift charge, burst charge and effect  
11 composition. Upon firing from a reloadable tube, the lift  
12 charge is consumed and the cartridge is expelled into the air;

13 B. "aerial shell kit-reloadable tube" means a  
14 package or kit containing a cardboard, high-density  
15 polyethylene or equivalent launching tube and not more than  
16 twelve small aerial shells. Each aerial shell is limited to a  
17 maximum of sixty grams of total chemical composition, including  
18 lift charges, and the maximum diameter of each shell shall not  
19 exceed one and three-fourths inches;

20 C. "bosque" means a cottonwood corridor adjacent to  
21 a river;

22 D. "chaser" means a paper or cardboard tube venting  
23 out the fuse end of the tube that contains no more than twenty  
24 grams of chemical composition and travels along the ground,  
25 often producing a whistling effect or other noise; an explosive

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1 composition not to exceed fifty milligrams may be included to  
2 produce a report;

3 E. "chemical composition" includes all pyrotechnic  
4 and explosive composition contained in a fireworks device but  
5 does not include inert materials such as clay used for plugs or  
6 organic matter such as rice hulls used for density control;

7 F. "cone fountain" means a cardboard or heavy paper  
8 cone containing no more than fifty grams of pyrotechnic  
9 composition that has the same effect as a cylindrical fountain.  
10 When more than one cone is mounted on a common base, total  
11 pyrotechnic composition shall not exceed two hundred grams;

12 G. "crackling device" means a sphere or paper tube  
13 that contains no more than twenty grams of pyrotechnic  
14 composition that produces a flash of light and a mild, audible  
15 crackling effect upon ignition, which effect is not considered  
16 to be an explosion. Crackling devices are not subject to the  
17 fifty-milligram limit of firecrackers;

18 H. "cylindrical fountain" means a cylindrical tube  
19 containing not more than seventy-five grams of pyrotechnic  
20 composition that produces a shower of colored sparks and  
21 sometimes a whistling effect or smoke. The device may be  
22 provided with a spike for insertion into the ground or a wood  
23 or plastic base for placing on the ground or a wood or  
24 cardboard handle to be hand-held. When more than one tube is  
25 mounted on a common base, total pyrotechnic composition shall

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1 not exceed two hundred grams;

2 I. "display distributor" means a person, firm or  
3 corporation selling display fireworks;

4 J. "display fireworks" means devices primarily  
5 intended for commercial displays that are designed to produce  
6 visible or audible effects by combustion, deflagration or  
7 detonation, including salutes containing more than one hundred  
8 thirty milligrams of explosive composition; aerial shells  
9 containing more than forty grams of chemical composition  
10 exclusive of lift charge; and other exhibition display items  
11 that exceed the limits for permissible fireworks;

12 K. "distributor" means a person, firm or  
13 corporation selling fireworks to wholesalers and retailers for  
14 resale;

15 L. "explosive composition" means a chemical  
16 compound or mixture, the primary purpose of which is to  
17 function by explosion, producing an audible effect in a  
18 fireworks device;

19 M. "firecracker" means a small, paper-wrapped or  
20 cardboard tube containing no more than fifty milligrams of  
21 explosive composition that produces noise and a flash of light;  
22 provided that firecrackers used in aerial devices may contain  
23 up to one hundred thirty milligrams of explosive composition  
24 per report;

25 N. "fireworks" means devices intended to produce a

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1 visible or audible effect by combustion, deflagration or  
2 detonation [~~and are categorized as "permissible fireworks" or~~  
3 ~~"display fireworks"~~] but does not include [~~novelties or~~]  
4 theatrical pyrotechnics articles;

5 O. "flitter sparkler" means a narrow paper tube  
6 attached to a stick or wire and filled with no more than five  
7 grams of pyrotechnic composition that produces color and sparks  
8 upon ignition and the paper at one end of the tube is ignited  
9 to make the device function;

10 P. "ground spinner" means a small, rapidly spinning  
11 device containing no more than twenty grams of pyrotechnic  
12 composition venting out an orifice usually on the side of the  
13 tube that when ignited produces a shower of sparks and color.  
14 "Ground spinner" is similar in operation to a wheel but is  
15 intended to be placed flat on the ground and ignited;

16 Q. "helicopter" or "aerial spinner" means a tube  
17 containing no more than twenty grams of chemical composition  
18 with a propeller or blade attached that spins rapidly as it  
19 rises into the air with a visible or audible effect sometimes  
20 produced at or near the height of flight;

21 R. "illuminating torch" means a cylindrical tube  
22 containing no more than one hundred grams of pyrotechnic  
23 composition that produces a colored flame upon ignition and may  
24 be spiked, based or hand-held. When more than one tube is  
25 mounted on a common base, total pyrotechnic composition shall

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1 not exceed two hundred grams;

2 S. "manufacturer" means a person, firm or  
3 corporation engaged in the manufacture of fireworks;

4 T. "mine" or "shell" means a heavy cardboard or  
5 paper tube usually attached to a wooden or plastic base and  
6 containing no more than sixty grams of total chemical  
7 composition, including lift charges, per tube that individually  
8 expels pellets of pressed pyrotechnic composition that burn  
9 with bright color in a star effect, or other devices propelled  
10 into the air, and that contains components producing reports  
11 containing a maximum one hundred thirty milligrams of explosive  
12 composition per report. A mine may contain more than one tube,  
13 but the tubes must fire in sequence upon ignition of one  
14 external fuse and must be a dense-packed collection of mine or  
15 shell tubes and the total chemical composition, including lift  
16 charges, shall not exceed two hundred grams;

17 U. "missile-type rocket" means a device similar to  
18 a stick-type rocket in size, composition and effect that uses  
19 fins rather than a stick for guidance and stability and that  
20 contains no more than twenty grams of chemical composition;

21 V. "multiple tube devices" means a device that  
22 contains more than one cardboard tube and the ignition of one  
23 external fuse that causes all of the tubes to function in  
24 sequence. The tubes are individually attached to a wood or  
25 plastic base or are dense-packed and are held together by glue,

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1 wire, string or other means that securely hold the tubes  
2 together during operation. A maximum total weight of five  
3 hundred grams of pyrotechnic composition shall be permitted;  
4 provided that the tubes are securely attached to a wood or  
5 plastic base and are separated from each other on the base by a  
6 distance of at least one-half inch. The connecting fuses on  
7 multiple tube devices shall be fused in sequence so that the  
8 tubes fire sequentially rather than all at once;

9 W. "novelties" means devices containing small  
10 amounts of pyrotechnic or explosive composition that produce  
11 limited visible or audible effects, including party poppers,  
12 snappers, toy smoke devices, snakes, glowworms, sparklers or  
13 toy caps, and devices intended to produce unique visual or  
14 audible effects that contain sixteen milligrams or less of  
15 explosive composition and limited amounts of other pyrotechnic  
16 composition, including cigarette loads, trick matches,  
17 explosive auto alarms and other trick noisemakers;

18 X. "permissible fireworks" or "consumer fireworks"  
19 means fireworks legal for sale to and use in New Mexico by the  
20 general public that comply with the latest construction,  
21 performance, composition and labeling requirements established  
22 by the United States consumer product safety commission and the  
23 United States department of transportation;

24 Y. "pyrotechnic composition" means a chemical  
25 mixture that on burning and without explosion produces visible

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1 or brilliant displays or bright lights or whistles or motion;

2 Z. "retailer" means a person, firm or corporation  
3 purchasing fireworks for resale to consumers;

4 AA. "roman candle" means a heavy paper or cardboard  
5 tube containing no more than twenty grams of chemical  
6 composition that individually expels pellets of pressed  
7 pyrotechnic composition that burn with bright color in a star  
8 effect;

9 BB. "specialty retailer" means a person, firm or  
10 corporation purchasing permissible fireworks for year-round  
11 resale in permanent retail stores whose primary business is  
12 tourism;

13 CC. "stick-type rocket" means a cylindrical tube  
14 containing no more than twenty grams of chemical composition  
15 with a wooden stick attached for guidance and stability that  
16 rises into the air upon ignition and produces a burst of color  
17 or sound at or near the height of flight;

18 DD. "theatrical pyrotechnics articles" means a  
19 pyrotechnic device for professional use in the entertainment  
20 industry similar to permissible fireworks or consumer fireworks  
21 in chemical composition and construction but not intended and  
22 labeled for consumer use;

23 EE. "toy smoke device" means a small plastic or  
24 paper item containing no more than one hundred grams of  
25 pyrotechnic composition that produces white or colored smoke as

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1 the primary effect;

2 FF. "wheel" means a pyrotechnic device that is made  
3 to attach to a post or other surface and that revolves,  
4 producing a shower of color and sparks and sometimes a  
5 whistling effect and that may have one or more drivers, each of  
6 which contains no more than sixty grams of pyrotechnic  
7 composition and the total wheel contains no more than two  
8 hundred grams total pyrotechnic composition;

9 GG. "wholesaler" means a person, firm or  
10 corporation purchasing fireworks for resale to retailers; and

11 HH. "wildlands" means lands owned by the governing  
12 body of a county or municipality that are designated for public  
13 recreational purposes and that are covered wholly or in part by  
14 timber, brush or native grass."

15 SECTION 7. Section 60-2C-8.1 NMSA 1978 (being Laws 1997,  
16 Chapter 17, Section 9, as amended) is amended to read:

17 "60-2C-8.1. [~~EXTREME OR SEVERE DROUGHT CONDITIONS~~]  
18 NATIONAL FIRE DANGER RATING--RESTRICTED SALE AND USE.--

19 A. The governing body of a municipality may hold a  
20 hearing to determine if fireworks restrictions should be  
21 imposed within the boundaries of the incorporated municipality  
22 [~~affected by extreme or severe drought conditions~~] where the  
23 fire danger rating is deemed to be high, very high or extreme,  
24 as determined by the national fire danger rating system. The  
25 findings of the governing body shall be based on current

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1 ~~[drought indices published by the national weather service and~~  
2 ~~any other relevant information supplied by]~~ fire danger ratings  
3 of the national fire danger rating system of the United States  
4 forest service.

5 B. Pursuant to any hearing under Subsection A of  
6 this section, the governing body of a municipality shall issue  
7 a proclamation declaring ~~[extreme or severe drought conditions]~~  
8 fireworks restrictions within the boundaries of the  
9 incorporated municipality if the governing body determines  
10 ~~[such conditions exist]~~ that the fire danger rating is deemed  
11 to be high, very high or extreme, as determined by the national  
12 fire danger rating system. The governing body's proclamation

13 ~~[(1) shall ban the sale and use of~~  
14 ~~missile-type rockets, helicopters, aerial spinners, stick-type~~  
15 ~~rockets and ground audible devices within the affected drought~~  
16 ~~area; and~~

17 ~~(2) shall give the governing body the power~~  
18 ~~to:~~

19 ~~(a) limit the use within its~~  
20 ~~jurisdiction of any fireworks not listed in Paragraph (1) of~~  
21 ~~this subsection to areas that are paved or barren or that have~~  
22 ~~a readily accessible source of water for use by the homeowner~~  
23 ~~or the general public;~~

24 ~~(b) ban the use of all fireworks within~~  
25 ~~wildlands in its jurisdiction, after consultation with the~~

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1 ~~state forester; and~~

2 (e) shall ban or restrict the sale or  
3 use, or both the sale and use, of ~~[display]~~ fireworks.

4 C. The municipal governing body's proclamation  
5 declaring ~~[an extreme or severe drought condition]~~ fireworks  
6 restrictions shall be issued no less than twenty days prior to  
7 a holiday for which fireworks may be sold. The proclamation  
8 shall explain restrictions on the sale or use of fireworks and  
9 permitted sales or uses of fireworks.

10 D. A municipal governing body's proclamation shall  
11 be effective for thirty days, and the governing body may issue  
12 succeeding proclamations if ~~[extreme or severe drought~~  
13 ~~conditions]~~ the national fire danger ratings warrant. A  
14 proclamation may be modified or rescinded within its thirty-day  
15 period by the governing body upon conducting an emergency  
16 hearing to determine if ~~[weather conditions]~~ the national fire  
17 danger ratings have improved.

18 E. The governing body of a county may hold a  
19 hearing to determine if fireworks restrictions should be  
20 imposed within the unincorporated portions of the county  
21 ~~[affected by extreme or severe drought conditions]~~ where the  
22 fire danger rating is deemed to be high, very high or extreme,  
23 as determined by the national fire danger rating system. The  
24 findings of the governing body shall be based on current  
25 ~~[drought indices published by the national weather service and~~

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1 ~~any other relevant information supplied by~~ fire danger ratings  
2 of the national fire danger rating system of the United States  
3 forest service.

4 F. Pursuant to any hearing under Subsection E of  
5 this section, the governing body of a county shall issue a  
6 proclamation declaring [~~extreme or severe drought conditions~~]  
7 fireworks restrictions within the unincorporated portions of  
8 the county if the governing body determines [~~such conditions~~  
9 ~~exist~~] that the fire danger rating is deemed to be high, very  
10 high or extreme, as determined by the national fire danger  
11 rating system. The governing body's proclamation

12 [~~(1) shall ban the sale and use of~~  
13 ~~missile-type rockets, helicopters, aerial spinners, stick-type~~  
14 ~~rockets and ground audible devices within the affected drought~~  
15 ~~area; and~~

16 ~~(2) shall give the governing body the power~~  
17 ~~to:~~

18 ~~(a) limit the use within its~~  
19 ~~jurisdiction of any fireworks not listed in Paragraph (1) of~~  
20 ~~this subsection to areas that are paved or barren or that have~~  
21 ~~a readily accessible source of water for use by the homeowner~~  
22 ~~or the general public;~~

23 ~~(b) ban the use of all fireworks within~~  
24 ~~wildlands in its jurisdiction, after consultation with the~~  
25 ~~state forester; and~~

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1                   ~~(e)~~ shall ban or restrict the sale or  
2 use, or both the sale and use, of ~~[display]~~ fireworks.

3                   G. The county governing body's proclamation  
4 declaring ~~[an extreme or severe drought condition]~~ fireworks  
5 restrictions shall be issued no less than twenty days prior to  
6 a holiday for which fireworks may be sold. The proclamation  
7 shall explain restrictions on the sale ~~[or]~~ and use of  
8 fireworks and permitted sales ~~[or]~~ and uses of fireworks.

9                   H. Except as otherwise provided in this subsection,  
10 a proclamation shall be effective for thirty days, and the  
11 county governing body may issue succeeding proclamations if  
12 ~~[extreme or severe drought conditions]~~ the national fire danger  
13 ratings warrant. A proclamation may be modified or rescinded  
14 within its thirty-day period by the governing body upon  
15 conducting an emergency hearing to determine if ~~[weather~~  
16 ~~conditions]~~ the national fire danger ratings have improved."

17                   SECTION 8. EMERGENCY.--It is necessary for the public  
18 peace, health and safety that this act take effect immediately.