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HOUSE BILL 219

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO EMERGENCY MANAGEMENT; ESTABLISHING AN INTRASTATE
MUTUAL AID SYSTEM TO SUPPORT REQUESTING AID FOR AND RESPONDING
TO LOCAL EMERGENCIES AND DISASTERS; ALLOWING A MEMBER
JURISDICTION TO WITHDRAW FROM PARTICIPATING IN THE INTRASTATE
MUTUAL AID SYSTEM; CREATING THE INTRASTATE MUTUAL AID COMMITTEE
AND DESCRIBING ITS MEMBERSHIP, DUTIES AND AUTHORITY; ALLOWING
INDIAN NATIONS, TRIBES AND PUEBLOS TO PARTICIPATE IN THE
INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR ADMINISTRATION OF
THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR GOVERNMENTAL
IMMUNITY FROM LIABILITY UNDER CERTAIN CONDITIONS; DECLARING AN
EMERGENCY.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Intrastate Mutual Aid Act".

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1 Section 2. DEFINITIONS.--As used in the Intrastate Mutual
2 Aid Act:

3 A. "committee" means the intrastate mutual aid
4 committee;

5 B. "disaster" means the occurrence or imminent
6 threat of widespread or severe damage, injury or loss of life
7 or property resulting from a natural or artificial cause,
8 including tornadoes, windstorms, snowstorms, wind-driven water,
9 high water, floods, earthquakes, landslides, mudslides,
10 volcanic action, fires, explosions, air or water contamination,
11 blight, droughts, infestations, riots, sabotage, hostile
12 military or paramilitary action, disruption of state services,
13 accidents involving radioactive or hazardous materials,
14 bioterrorism or incidents involving weapons of mass
15 destruction;

16 C. "emergency" means the imminent threat of a
17 disaster causing immediate peril to life or property that
18 timely action can avert or minimize;

19 D. "member jurisdiction" means the state, through
20 the office of the governor or the governor's designee, a
21 political subdivision or an Indian nation, tribe or pueblo that
22 participates in the system;

23 E. "political subdivision" means a county or a
24 municipality; and

25 F. "system" means the intrastate mutual aid system.

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1 Section 3. COMMITTEE CREATED--MEMBERSHIP--MEETINGS--
2 DUTIES--EXPENSES.--

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

- 19 B. The committee shall:
- 20 (1) review the progress and status of
 - 21 intrastate mutual aid;
 - 22 (2) assist in developing methods to track and
 - 23 evaluate activation of the system;
 - 24 (3) examine issues facing member jurisdictions
 - 25 in the implementation of intrastate mutual aid;

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

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

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

8 (c) record keeping for member
9 jurisdictions; and

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

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

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

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

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

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

4 Section 4. INTRASTATE MUTUAL AID SYSTEM; INITIAL
5 PARTICIPATION--WITHDRAWAL.--

6 A. The "intrastate mutual aid system" is created.
7 The system, pursuant to the Intrastate Mutual Aid Act, is
8 composed of and may be described as:

9 (1) member jurisdictions and action taken by a
10 member jurisdiction;

11 (2) the committee and action taken by the
12 committee;

13 (3) guidelines and procedures;

14 (4) action taken with respect to requesting
15 aid for an emergency or disaster; and

16 (5) action taken with respect to responding to
17 a request for aid for an emergency or disaster.

18 B. The state and, except as provided in Subsection
19 D of this section, every political subdivision of the state is
20 part of the system.

21 C. An Indian nation, tribe or pueblo located within
22 the boundaries of the state may become a member jurisdiction
23 upon:

24 (1) adoption by the tribal government of a
25 resolution declaring the tribe's desire to be a member

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1 jurisdiction and to comply with the provisions of the
2 Intrastate Mutual Aid Act and the guidelines and procedures
3 adopted by the committee; and

4 (2) receipt by the emergency planning and
5 coordination bureau of the department of public safety of a
6 copy of the resolution.

7 D. A member jurisdiction other than the state may
8 elect not to participate in or to withdraw from the system
9 upon:

10 (1) adopting a resolution or ordinance
11 declaring that the member jurisdiction elects not to
12 participate in or to withdraw from the system; and

13 (2) receipt by the emergency planning and
14 coordination bureau of the department of public safety of a
15 copy of the resolution or ordinance.

16 E. This section does not preclude a member
17 jurisdiction from entering into any other agreement with
18 another political subdivision or Indian nation, tribe or
19 pueblo, to the extent provided by law, and does not affect any
20 other agreement to which a political subdivision is a party or
21 may become a party.

22 Section 5. REQUEST FOR AID.--

23 A. A member jurisdiction may request aid from
24 another member jurisdiction:

25 (1) to prevent, mitigate, respond to or

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1 recover from an emergency or disaster; or

2 (2) in concert with drills or exercises
3 between member jurisdictions.

4 B. A request for aid shall be made by or through
5 the presiding officer of the governing body of a member
6 jurisdiction or the chief executive officer or the officer's
7 designee of a member jurisdiction. A request may be verbal or
8 in writing. If the request is verbal, it shall be confirmed in
9 writing within thirty days of the date on which the request was
10 made.

11 Section 6. LIMITATION ON AID--COMMAND AND CONTROL.--A
12 member jurisdiction's obligation to provide aid to prevent,
13 mitigate, respond to or recover from an emergency or disaster
14 or in drills or exercises is subject to the following
15 conditions:

16 A. a member jurisdiction that responds to a request
17 for aid may withhold resources to the extent necessary to
18 provide reasonable protection and services for that responding
19 member jurisdiction;

20 B. the personnel of a responding member
21 jurisdiction are under:

22 (1) the command and control of the responding
23 member jurisdiction for purposes that include medical
24 protocols, standard operating procedures and other protocols;
25 and

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1 (2) the operational control of the appropriate
2 officials of the member jurisdiction receiving aid; and

3 C. the assets and equipment of a responding member
4 jurisdiction are under:

5 (1) the command and control of the responding
6 member jurisdiction; and

7 (2) the operational control of the appropriate
8 officials of the member jurisdiction receiving aid.

9 Section 7. PORTABILITY OF BONA FIDES.--If a person holds
10 a license, certificate, permit or similar documentation that
11 evidences the person's qualifications in a professional,
12 mechanical or other skill and the aid of the person is
13 requested by a member jurisdiction, the person is:

14 A. considered to be licensed, certified, permitted
15 or otherwise documented in the member jurisdiction that
16 requests aid for the duration of the emergency or disaster or
17 of the drills or exercises; and

18 B. subject to legal limitations or conditions
19 prescribed by the governing body or chief executive officer of
20 the member jurisdiction that requests aid.

21 Section 8. REIMBURSEMENT--DISPUTE RESOLUTION.--

22 A. A requesting member jurisdiction shall reimburse
23 each member jurisdiction that responds to a request for aid and
24 renders aid under the system, unless the responding member
25 jurisdiction donates all or a portion of the cost of the aid to

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1 the requesting member jurisdiction.

2 B. A request for reimbursement shall be in
3 accordance with procedures developed by the committee.

4 C. If a dispute regarding reimbursement arises
5 between a member jurisdiction that requested aid under the
6 system and a member jurisdiction that provided aid under the
7 system, they shall make every effort to resolve the dispute
8 within thirty days of written notice of the dispute given by
9 the member jurisdiction raising the dispute to the other member
10 jurisdiction. If the dispute is not resolved within ninety
11 days from the date of the written notice, either member
12 jurisdiction may:

13 (1) request the department of finance and
14 administration to resolve the dispute; or

15 (2) if one of the disputing member
16 jurisdictions is an Indian nation, tribe or pueblo, request
17 arbitration pursuant to the commercial arbitration rules and
18 mediation procedures of the American arbitration association.

19 Section 9. BENEFITS.--

20 A. If a person is an employee of a member
21 jurisdiction that responds to a request for aid under the
22 system and the person sustains injury in the course of
23 providing the requested aid, the person is entitled to all
24 applicable benefits, including workers' compensation benefits,
25 that are normally available to the person as an employee of the

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1 member jurisdiction that employs the person.

2 B. If a person described in Subsection A of this
3 section sustains injury that results in death, the person's
4 estate shall receive additional state and federal benefits that
5 may be available for death in the line of duty.

6 Section 10. LIABILITY--IMMUNITY.--

7 A. Except as provided in Section 9 of the
8 Intrastate Mutual Aid Act, a person responding to a request for
9 aid by a member jurisdiction and who is under the operational
10 control of that member jurisdiction, as provided in Section 6
11 of the Intrastate Mutual Aid Act, is considered for the
12 purposes of liability to be an employee of the requesting
13 member jurisdiction.

14 B. Except in cases showing fraud or intentional
15 malice, immunity from tort liability for actions taken under
16 the Intrastate Mutual Aid Act is granted to the state, its
17 agencies and political subdivisions and to their officers,
18 agents and employees. Waivers of immunity from tort liability
19 granted under the Tort Claims Act shall not be applicable to
20 actions taken under the Intrastate Mutual Aid Act.

21 Section 11. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.