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HOUSE BILL 486

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

ROBERT S. LIGHT

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO HAZARDOUS MATERIALS; ENACTING THE HAZARDOUS MATERIALS TRANSPORTATION ACT TO ESTABLISH A HAZARDOUS MATERIALS TRANSPORTATION PERMIT PROGRAM; AMENDING THE EMERGENCY MANAGEMENT ACT; PROVIDING A PENALTY; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 8 of this act may be cited as the "Hazardous Materials Transportation Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the Hazardous Materials Transportation Act:

- A. "department" means the taxation and revenue department;
- B. "hazardous material" means:

Underscored material = new  
[bracketed material] = delete

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1 (1) a material of a type or in a quantity that  
2 requires the transport vehicle to be placarded as a carrier of  
3 hazardous material in accordance with the Code of Federal  
4 Regulations, Title 49, Part 171.8 or Part 172; or

5 (2) a hazardous substance or marine pollutant as  
6 defined in the Code of Federal Regulations, Title 49, Section  
7 171.8 when transported in bulk packaging;

8 C. "person" means an individual or any other legal  
9 entity; and

10 D. "public entity" means an agency, instrumentality  
11 or political subdivision of a federal, state or Indian  
12 government.

13 Section 3. [NEW MATERIAL] HAZARDOUS MATERIALS  
14 TRANSPORTATION PERMIT--DEPARTMENT DUTIES--FEES. --

15 A. Except as provided in Section 4 of the Hazardous  
16 Materials Transportation Act, a person may not transport a  
17 hazardous material on a state or federal highway without a  
18 permit from the department.

19 B. The department shall establish regulations for  
20 the issuance of hazardous materials transportation permits and  
21 shall issue permits to applicants who meet the requirements of  
22 the regulations.

23 C. Hazardous materials transportation permits shall  
24 be issued for a period not to exceed twelve months for a fee of  
25 two hundred fifty dollars (\$250), regardless of the number of

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1 vehicles or combination of vehicles operated by the permit  
2 applicant, or the department may issue a permit for a single  
3 shipment of hazardous materials for a fee of seventy-five  
4 dollars (\$75.00).

5 D. Public entities may acquire a hazardous materials  
6 transportation permit exempt from the fee in Subsection C of  
7 this section.

8 E. A copy of any hazardous materials transportation  
9 permit issued pursuant to this section shall be carried in each  
10 vehicle included under conditions of the permit. Hazardous  
11 materials transportation permits shall be open for inspection by  
12 any peace officer.

13 F. Fees collected pursuant to this section shall be  
14 deposited in the general fund.

15 Section 4. [NEW MATERIAL] EXEMPTIONS. -- The following  
16 activities are exempt from the Hazardous Materials  
17 Transportation Act:

18 A. the transportation of pesticides as defined in  
19 Subsection N of Section 76-4-3 NMSA 1978 in quantities not  
20 required to be placarded under the Code of Federal Regulations,  
21 Title 49, Part 172 when transported by a commercial applicator  
22 as defined in Subsection W of Section 76-4-3 NMSA 1978;

23 B. the transportation by a farmer or a rancher of a  
24 hazardous material for use on a farm or a ranch;

25 C. the transportation of a hazardous waste

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1 designated as "special waste" by the department and the  
2 secretary of environment;

3 D. the transportation of a fertilizer or  
4 agricultural chemical by the retailer of the product to a farm  
5 or a ranch within a seventy-five mile radius of the retailer for  
6 use only on the farm or the ranch to which the material is  
7 transported; and

8 E. the transportation of drilling fluids, produced  
9 waters and other wastes associated with the exploration,  
10 development or production of crude oil, natural gas or  
11 geothermal energy.

12 Section 5. [NEW MATERIAL] PERMIT SUSPENSION, REVOCATION  
13 OR DENIAL. --The department may suspend or revoke a hazardous  
14 materials transportation permit or order the suspension of the  
15 transportation of hazardous material under a permit if a  
16 permittee violates conditions of a hazardous materials  
17 transportation permit. The department shall not issue a permit  
18 to an applicant who has violated the conditions of a hazardous  
19 materials transportation permit issued by this state, another  
20 state or the federal government or to any applicant who has  
21 violated Section 3 of the Hazardous Materials Transportation  
22 Act. A person is entitled to a hearing if the person's  
23 application for a permit has been denied or if the person's  
24 permit has been suspended or revoked.

25 Section 6. [NEW MATERIAL] BASE STATE AGREEMENTS. --The

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1 department may enter into agreements with other states, the  
2 federal government, Canada, Mexico or other participating  
3 organizations to provide for reciprocal permitting of persons  
4 transporting hazardous materials and for the efficient  
5 administration of the Hazardous Materials Transportation Act.

6 Section 7. [NEW MATERIAL] PREEMPTION. -- All existing  
7 hazardous materials transportation registration or permitting  
8 programs administered by political subdivisions of the state are  
9 void and preempted by the Hazardous Materials Transportation  
10 Act.

11 Section 8. [NEW MATERIAL] CIVIL PENALTY. -- Any person who  
12 violates Section 3 of the Hazardous Materials Transportation Act  
13 shall be subject to a civil penalty not to exceed two thousand  
14 dollars (\$2,000) for each offense. All actions to recover the  
15 penalties provided for in this section may be brought by the  
16 department before a district court. The department may bring an  
17 action in the district court seeking injunctive relief to  
18 enforce provisions of the Hazardous Materials Transportation  
19 Act. All penalties recovered in any such action shall be paid  
20 into the general fund.

21 Section 9. Section 74-4B-4 NMSA 1978 (being Laws 1983,  
22 Chapter 80, Section 4, as amended) is amended to read:

23 "74-4B-4. STATE RESPONSIBILITY FOR MANAGEMENT OF  
24 ACCIDENTS-- IMMUNITY FROM LIABILITY-- COOPERATIVE AGREEMENTS--  
25 PRIVATE PROPERTY. --

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1           A. The secretary shall have final authority to  
2 administer the provisions of the Emergency Management Act.

3           B. As between state and local governments, the state  
4 government has the primary responsibility for the management of  
5 an accident, and the local government in whose jurisdiction the  
6 accident occurs shall assist the state in its management of the  
7 accident.

8           C. Nothing in the Emergency Management Act shall be  
9 construed as a waiver or alteration of the immunity from  
10 liability granted under the Tort Claims Act or as a waiver of  
11 any other immunity or privilege under law.

12           D. The state, through the secretary or his designee,  
13 may enter into cooperative agreements with county and municipal  
14 governments for the management of accidents based on the  
15 severity of the accident and the resources of the local  
16 government. The plan shall set forth the criteria for  
17 determining when an accident may be managed by the local  
18 government in whose jurisdiction the accident occurred.

19           E. The secretary shall support emergency response  
20 capabilities by assisting local and state responders in the  
21 acquisition of equipment, training and hazardous materials  
22 information.

23           [E.] F. The state, through the secretary or his  
24 designee, may enter into cooperative agreements with the federal  
25 government, Indian tribes and pueblos and bordering states for

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1 assistance in the management of accidents.

2 [F-] G. Whenever an accident appears imminent or has  
3 occurred employees or authorized persons of responsible state  
4 agencies as defined in Section 74-4B-5 NMSA 1978 are authorized  
5 to enter upon any [~~buildings or~~] premises for the purpose of  
6 determining whether it is necessary for emergency management  
7 procedures to be implemented. The state on-scene coordinator or  
8 a responsible state agency may take full control and custody of  
9 [~~such buildings and~~] the premises for the purpose of managing  
10 the accident. "

11 Section 10. REPEAL. -- Section 7-15A-11 NMSA 1978 (being  
12 Laws 1988, Chapter 14, Section 2, as amended) is repealed.

13 Section 11. EFFECTIVE DATE. -- The effective date of the  
14 provisions of this act is July 1, 1996.

# State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

February 5, 1996

Mr. Speaker:

Your ENERGY AND NATURAL RESOURCES COMMITTEE, to  
whom has been referred

HOUSE BILL 486

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
JUDICIARY COMMITTEE.

Respectfully submitted,

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James Roger Madalena, Chairman



FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

HENRC/HB 486

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Knowles, Picraux, Ryan

Absent: None

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# State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 10, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 486

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

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Cisco McSorley, Chairman

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, Gubbels, Larranaga, Perls, Sanchez, R. G.

Absent: Luna

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 13, 1996

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 486

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

\_\_\_\_\_  
Ben D. Altamirano, Chairman

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

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FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

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Date \_\_\_\_\_

The roll call vote was 8 For 0 Against  
Yes:       8  
No:        0  
Excused: Donisthorpe, Duran, Ingle, Kidd, Kysar  
Absent:   None

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Underscored material = new  
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