

11/17/10

1 BILL

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4
5
6 DISCUSSION DRAFT

7
8 FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

9
10 AN ACT

11 RELATING TO EXECUTIVE ORGANIZATION; MERGING THE HOMELAND
12 SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT WITH THE
13 DEPARTMENT OF PUBLIC SAFETY; TRANSFERRING THE ADMINISTRATION OF
14 THE ENHANCED 911 SERVICE PROGRAM TO THE HOMELAND SECURITY AND
15 EMERGENCY MANAGEMENT DIVISION OF THE DEPARTMENT OF PUBLIC
16 SAFETY; REQUIRING THE DEPARTMENT OF INFORMATION TECHNOLOGY TO
17 PROVIDE INFRASTRUCTURE FOR ENHANCED 911 SERVICES; TRANSFERRING
18 THE FIRE MARSHAL DIVISION OF THE PUBLIC REGULATION COMMISSION
19 TO THE DEPARTMENT OF PUBLIC SAFETY; PROVIDING FOR TRANSFERS OF
20 FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL
21 OBLIGATIONS AND REFERENCES; REPEALING THE HOMELAND SECURITY AND
22 EMERGENCY MANAGEMENT DEPARTMENT ACT; AMENDING, REPEALING,
23 RECOMPILING AND ENACTING SECTIONS OF THE NMSA 1978; RECONCILING
24 MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAWS IN LAWS 2003,
25 LAWS 2007 AND LAWS 2009.

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

3 **SECTION 1.** Section 3-18-7 NMSA 1978 (being Laws 1975,
4 Chapter 14, Section 1, as amended) is amended to read:

5 "3-18-7. ADDITIONAL COUNTY AND MUNICIPAL POWERS--FLOOD
6 AND MUDSLIDE HAZARD AREAS--FLOOD PLAIN PERMITS--LAND USE
7 CONTROL--JURISDICTION--AGREEMENT.--

8 A. For the purpose of minimizing or eliminating
9 damage from floods or mudslides in federal emergency management
10 agency and locally designated flood-prone areas and for the
11 purpose of promoting health, safety and the general welfare, a
12 county or municipality with identified flood or mudslide hazard
13 areas shall by ordinance:

14 (1) designate and regulate flood plain areas
15 having special flood or mudslide hazards;

16 (2) prescribe standards for constructing,
17 altering, installing or repairing buildings and other
18 improvements under a permit system within a designated flood or
19 mudslide hazard area;

20 (3) require review by the local flood plain
21 manager for development within a designated flood or mudslide
22 hazard area; provided that final decisions are approved by the
23 local governing body;

24 (4) review subdivision proposals and other new
25 developments within a designated flood or mudslide hazard area

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1 to ensure that:

2 (a) all such proposals are consistent
3 with the need to minimize flood damage;

4 (b) all public utilities and facilities
5 such as sewer, gas, electrical and water systems are designed
6 to minimize or eliminate flood damage; and

7 (c) adequate drainage is provided so as
8 to reduce exposure to flood hazards;

9 (5) require new or replacement water supply
10 systems or sanitary sewage systems within a designated flood or
11 mudslide hazard area to be designed to minimize or eliminate
12 infiltration of flood waters into the systems and discharges
13 from the systems into flood waters and require on-site waste
14 disposal systems to be located so as to avoid impairment of
15 them or contamination from them during flooding; and

16 (6) designate and regulate floodways for the
17 passage of flood waters.

18 B. A flood plain ordinance adopted pursuant to this
19 section shall substantially conform to the minimum standards
20 prescribed by the federal insurance administration, regulation
21 1910 issued pursuant to Subsection 7(d), 79 Stat. 670, Section
22 1361, 82 Stat. 587 and 82 Stat. 575, all as amended.

23 C. A county or municipality that enacts a flood
24 plain ordinance shall designate a person, certified pursuant to
25 the state-certified flood plain manager program, as the flood

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1 plain manager to administer the flood plain ordinance.

2 D. A county or municipality that has areas
3 designated by the federal emergency management agency and the
4 county or municipality as flood-prone shall participate in the
5 national flood insurance program.

6 E. A county or municipality shall have exclusive
7 jurisdiction over flood plain permits issued under its
8 respective flood plain ordinance in accordance with this
9 section and so long as all structures built in flood plains are
10 subject to inspection and approval pursuant to the Construction
11 Industries Licensing Act. Notwithstanding Section 3-18-6 NMSA
12 1978, when a municipality adopts a flood plain ordinance
13 pursuant to Paragraph (2) of Subsection A of this section, the
14 municipality's jurisdiction under the flood plain ordinance may
15 take precedence over a respective county flood plain ordinance
16 within the municipality's boundary and within the
17 municipality's subdividing and platting jurisdiction.

18 F. A county or municipality shall designate flood
19 plain areas having special flood or mudslide hazards in
20 substantial conformity with areas identified as flood- or
21 mudslide-prone by the federal insurance administration pursuant
22 to the national flood insurance program and may designate areas
23 as flood- or mudslide-prone that may not be so identified by
24 the federal insurance administration.

25 G. A municipality or county adopting a flood plain

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1 ordinance pursuant to this section may enter into reciprocal
2 agreements with any agency of the state, other political
3 subdivisions or the federal government in order to effectively
4 carry out the provisions of this section.

5 H. The homeland security and emergency management
6 division of the department of public safety is designated as
7 the state coordinating agency for the national flood insurance
8 program and may assist counties or municipalities when
9 requested by a county or municipality to provide technical
10 advice and assistance."

11 SECTION 2. Section 8-8-6 NMSA 1978 (being Laws 1998,
12 Chapter 108, Section 6, as amended) is amended to read:

13 "8-8-6. COMMISSION--DIVISIONS.--The commission shall
14 include the following organizational units:

- 15 A. the administrative services division;
- 16 B. the consumer relations division;
- 17 C. the insurance division;
- 18 D. the legal division;
- 19 E. the transportation division; and
- 20 F. the utility division [~~and~~
- 21 ~~G. the fire marshal division~~]."

22 SECTION 3. Section 9-15-48 NMSA 1978 (being Laws 2003,
23 Chapter 166, Section 1 and Laws 2003, Chapter 170, Section 1,
24 as amended) is amended to read:

25 "9-15-48. OFFICE OF MILITARY BASE PLANNING AND SUPPORT

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1 CREATED--DUTIES.--

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

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

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

- 12 (1) employ, under the authorization of the
13 [~~governor's homeland security adviser~~] director of the homeland
14 security and emergency management division, the staff necessary
15 to carry out the work of the office of military base planning
16 and support and the military base planning commission;
- 17 (2) support the commission;
- 18 (3) inform the governor and the [~~governor's~~
19 ~~homeland security adviser~~] director of the homeland security
20 and emergency management division about issues impacting the
21 military bases in the state, including infrastructure
22 requirements, environmental needs, military force structure
23 possibilities, tax implications, property considerations and
24 issues requiring coordination and support from other state
25 agencies;

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

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

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

9 SECTION 4. Section 9-15-49 NMSA 1978 (being Laws 2003,
10 Chapter 166, Section 2 and Laws 2003, Chapter 170, Section 2,
11 as amended) is amended to read:

12 "9-15-49. MILITARY BASE PLANNING COMMISSION CREATED--
13 COMPOSITION.--

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

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

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

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

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

17 SECTION 5. Section 9-19-3 NMSA 1978 (being Laws 1987,
18 Chapter 254, Section 3, as amended) is amended to read:

19 "9-19-3. PURPOSE.--The purpose of the Department of
20 Public Safety Act is to establish a single, unified department
21 to consolidate state law enforcement ~~[and]~~, safety and homeland
22 security and emergency management functions in order to provide
23 better management, real coordination and more efficient use of
24 state resources and manpower in responding to New Mexico's
25 public safety and homeland security and emergency management

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1 needs and problems and to improve the professionalism of the
2 state's law enforcement and investigative functions and
3 personnel and the state's homeland security and emergency
4 management functions and personnel."

5 SECTION 6. Section 9-19-4 NMSA 1978 (being Laws 1987,
6 Chapter 254, Section 4, as amended) is amended to read:

7 "9-19-4. DEPARTMENT ESTABLISHED.--There is created in the
8 executive branch the "department of public safety". The
9 department shall be a cabinet department and shall consist of,
10 but not be limited to, [~~five~~] eight program divisions, an
11 administrative division and an information technology division
12 as follows:

- 13 A. the New Mexico state police division;
- 14 B. the special investigations division;
- 15 C. the training and recruiting division;
- 16 D. the technical support division;
- 17 E. the administrative services division;
- 18 F. the motor transportation division; [~~and~~]
- 19 G. the information technology division;
- 20 H. the homeland security and emergency management
- 21 division;
- 22 I. the fire marshal division; and
- 23 J. the enhanced 911 division."

24 SECTION 7. Section 9-19-6 NMSA 1978 (being Laws 1987,
25 Chapter 254, Section 6, as amended) is amended to read:

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1 "9-19-6. SECRETARY--DUTIES AND GENERAL POWERS.--

2 A. The secretary is responsible to the governor for
3 the operation of the department. It is [~~his~~] the secretary's
4 duty to manage all operations of the department and to
5 administer and enforce the laws with which [~~he~~] the secretary
6 or the department is charged.

7 B. To perform [~~his~~] the secretary's duties, the
8 secretary has every power expressly enumerated in the laws,
9 whether granted to the secretary or the department or any
10 division of the department, except where authority conferred
11 upon any division is explicitly exempted from the secretary's
12 authority by statute. In accordance with these provisions, the
13 secretary shall:

14 (1) except as otherwise provided in the
15 Department of Public Safety Act, exercise general supervisory
16 and appointing authority over all department employees, subject
17 to any applicable personnel laws and regulations; provided that
18 the secretary shall not reduce positions for the seventy-sixth
19 fiscal year budgeted in the General Appropriation Act of 1987
20 except for cause, by attrition or by occurrence of a vacancy;

21 (2) except as otherwise provided in the
22 Department of Public Safety Act, serve as the coordinating
23 officer for all departments or agencies and all department and
24 agency employees required to provide services after an
25 emergency has been declared by the governor;

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1 [~~(2)~~] (3) delegate authority to subordinates
2 as [~~he~~] the secretary deems necessary and appropriate, clearly
3 delineating such delegated authority and the limitations
4 thereto;

5 [~~(3)~~] (4) organize the department into those
6 organizational units [~~he~~] the secretary deems will enable it to
7 function most efficiently, subject to any provisions of law
8 requiring or establishing specific organizational units;

9 [~~(4)~~] (5) within the limitations of available
10 appropriations and applicable laws, employ and fix the
11 compensation of those persons necessary to discharge [~~his~~] the
12 secretary's duties;

13 [~~(5)~~] (6) take administrative action by
14 issuing orders and instructions, not inconsistent with the law,
15 to assure implementation of and compliance with the provisions
16 of law with the administration or execution of which [~~he~~] the
17 secretary is responsible and to enforce those orders and
18 instructions by appropriate administrative action [~~or actions~~]
19 in the court;

20 [~~(6)~~] (7) conduct research and studies that
21 will improve the operation of the department and examine other
22 entities and functions of state government related to public
23 safety for purposes of possible transfer to the department;

24 [~~(7)~~] (8) provide courses of instruction and
25 practical training for employees of the department and other

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1 persons involved in the administration of programs with the
2 objective of improving the operations and efficiency of
3 administration;

4 [~~(8)~~] (9) prepare an annual budget of the
5 department;

6 [~~(9)~~] (10) provide cooperation, at the request
7 of heads of administratively attached agencies, in order to:

8 (a) minimize or eliminate duplication of
9 services and jurisdictional conflicts;

10 (b) coordinate activities and resolve
11 problems of mutual concern; and

12 (c) resolve by agreement the manner and
13 extent to which the department shall provide budgeting,
14 recordkeeping and related clerical assistance to
15 administratively attached agencies, if any;

16 [~~(10)~~] (11) appoint, with the governor's
17 consent, for each division, a director. These appointed
18 positions are exempt from the provisions of the Personnel Act.
19 Persons appointed to these positions shall serve at the
20 pleasure of the secretary;

21 [~~(11)~~] (12) appoint the director of the New
22 Mexico law enforcement academy, subject to the approval of the
23 New Mexico law enforcement academy board;

24 [~~(12)~~] (13) give bond in the penal sum of
25 twenty-five thousand dollars (\$25,000) and require division

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1 directors to each give bond in the penal sum of ten thousand
2 dollars (\$10,000), conditioned upon the faithful performance of
3 duties as provided in the Surety Bond Act, with the department
4 paying the cost of such bonds; and

5 [~~(13)~~] (14) require performance bonds of such
6 employees and officers as ~~[he]~~ the secretary deems necessary as
7 provided in the Surety Bond Act, with the department paying the
8 costs of such bonds.

9 C. The secretary may apply for and receive, with
10 the governor's approval, in the name of the department, any
11 public or private funds, including but not limited to United
12 States government funds, available to the department to carry
13 out its programs, duties or services.

14 D. Where functions of departments overlap or a
15 function assigned to one department could better be performed
16 by another department, the secretary may recommend appropriate
17 legislation to the next session of the legislature for its
18 approval.

19 E. The secretary may make and adopt such reasonable
20 and procedural rules and regulations as may be necessary to
21 carry out the duties of the department and its divisions. No
22 rule or regulation promulgated by the director of any division
23 in carrying out the functions and duties of the division shall
24 be effective until approved by the secretary unless otherwise
25 provided by statute. Unless otherwise provided by statute, no

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1 regulation affecting any person or agency outside the
2 department shall be adopted, amended or repealed without a
3 public hearing on the proposed action before the secretary or a
4 hearing officer designated by ~~[him]~~ the secretary. The public
5 hearing shall be held in Santa Fe unless otherwise permitted by
6 statute. Notice of the subject matter of the regulation, the
7 action proposed to be taken, the time and place of the hearing,
8 the manner in which interested persons may present their views
9 and the method by which copies of the proposed regulation,
10 proposed amendment or repeal of an existing regulation may be
11 obtained shall be published once at least thirty days prior to
12 the hearing date in a newspaper of general circulation in the
13 state and mailed at least thirty days prior to the hearing date
14 to all persons who have made a written request for advance
15 notice of hearing.

16 F. All rules and regulations shall be filed in
17 accordance with the State Rules Act."

18 **SECTION 8.** Section 9-19-7 NMSA 1978 (being Laws 1987,
19 Chapter 254, Section 7, as amended) is amended to read:

20 "9-19-7. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
21 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

22 A. The organizational units of the department and
23 the officers of those units specified by law shall have all the
24 powers and duties enumerated in the specific laws involved.
25 However, the carrying out of those powers and duties shall be

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1 subject to the direction and supervision of the secretary, who
2 shall retain the final decision-making authority and
3 responsibility for the administration of any such laws as
4 provided in Subsection B of Section 9-19-6 NMSA 1978. The
5 department shall have access to all records, data and
6 information of other state departments, agencies and
7 institutions, including its own organizational units, not
8 specifically held confidential by law.

9 B. The New Mexico state police division shall
10 consist of the commissioned officers and civilian personnel,
11 including all communications equipment operators, of the New
12 Mexico state police uniform division and the commissioned
13 officers and civilian personnel of the New Mexico state police
14 criminal division and such other personnel as may be assigned
15 by the secretary or by the governor pursuant to an executive
16 order as authorized in the Department of Public Safety Act.

17 C. The special investigations division shall
18 consist of the former enforcement personnel of the department
19 of alcoholic beverage control and such other personnel as may
20 be assigned by the secretary or by the governor pursuant to an
21 executive order as authorized in the Department of Public
22 Safety Act. The division is responsible for the enforcement of
23 the New Mexico Bingo and Raffle Act and the Liquor Control Act.

24 D. The technical support division shall consist of
25 functions such as communications, crime laboratory and records.

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1 E. The training and recruiting division shall
2 consist of the personnel of the New Mexico law enforcement
3 academy, the New Mexico state police training division and all
4 other training personnel and functions of the department as the
5 secretary may transfer to this division.

6 F. The administrative services division shall
7 consist of the administrative services [~~and services divisions~~]
8 of the [~~New Mexico state police and those administrative~~
9 ~~support personnel of the other existing departments, divisions~~
10 ~~or offices as the secretary deems necessary]~~ department.

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

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

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

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

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

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

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

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

18 (8) coordinating law enforcement
19 counterterrorism prevention, preparedness and response training
20 on a statewide basis, including training for emergency
21 responders, government officials, health care providers and
22 others as appropriate;

23 (9) working with emergency response and
24 emergency management programs and providing assistance in
25 developing and conducting terrorism response exercises for

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1 emergency responders, government officials, health care
2 providers and others;

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

6 (11) developing and maintaining a statewide
7 plan and strategy to manage and allocate federal grant funds
8 required to provide the state's emergency response community
9 with the equipment necessary to respond to an act of terrorism
10 involving a weapon of mass destruction; and

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

14 H. The fire marshal division shall consist of
15 functions formerly exercised by the fire marshal division of
16 the public regulation commission and shall include:

17 (1) the firefighter training academy bureau;

18 (2) the fire service support bureau;

19 (3) the fire investigations bureau; and

20 (4) the fire code enforcement bureau.

21 I. The enhanced 911 division shall administer the
22 state's enhanced 911 service program pursuant to the Enhanced
23 911 Act."

24 SECTION 9. A new section of the Department of Public
25 Safety Act is enacted to read:

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1 "NEW MATERIAL] COOPERATION WITH FEDERAL GOVERNMENT--
2 AUTHORITY OF SECRETARY--SINGLE STATE AGENCY STATUS.--
3 A. The homeland security and emergency management
4 division is authorized to cooperate with the federal government
5 in the administration of homeland security and emergency
6 management programs in which financial or other participation
7 by the federal government is authorized or mandated under state
8 or federal laws, rules or orders. The division may enter into
9 agreements with agencies of the federal government to implement
10 homeland security and emergency management programs subject to
11 availability of appropriated state funds and any provisions of
12 state laws applicable to such agreements or participation by
13 the state.
14 B. The governor may by appropriate order designate
15 the homeland security and emergency management division or the
16 department as the single state agency for the administration of
17 any homeland security or emergency management program when that
18 designation is a condition of federal financial or other
19 participation in the program under applicable federal law, rule
20 or order. Whether or not a federal condition exists, the
21 governor may designate the division or the department as the
22 single state agency for the administration of any homeland
23 security or emergency management program. No designation of a
24 single state agency under the authority granted in this section
25 shall be made in contravention of state law."

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1 SECTION 10. Section 10-11A-2 NMSA 1978 (being Laws 1983,
2 Chapter 263, Section 2, as amended) is amended to read:
3 "10-11A-2. DEFINITIONS.--As used in the Volunteer
4 Firefighters Retirement Act:
5 A. "association" means the public employees
6 retirement association;
7 B. "board" means the retirement board of the
8 association;
9 C. "fire department" means a fire department with
10 volunteer members that is certified by the fire marshal
11 division of the [~~public regulation commission~~] department of
12 public safety;
13 D. "fund" means the volunteer firefighters
14 retirement fund; and
15 E. "member" means a volunteer nonsalaried
16 firefighter who is listed as an active member on the rolls of a
17 fire department and whose first year of service credit was
18 accumulated during or after the year the member attained the
19 age of sixteen. A volunteer firefighter who receives
20 reimbursement for personal out-of-pocket costs shall not be
21 considered a salaried firefighter."
22 SECTION 11. Section 10-11A-6 NMSA 1978 (being Laws 1983,
23 Chapter 263, Section 6, as amended) is amended to read:
24 "10-11A-6. DETERMINATION OF SERVICE CREDIT.--
25 A. A member may claim one year of service credit

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1 for each year in which a fire department certifies that the
2 member:

3 (1) attended fifty percent of all scheduled
4 fire drills for which the fire department held the member
5 responsible to attend;

6 (2) attended fifty percent of all scheduled
7 business meetings for which the fire department held the member
8 responsible to attend; and

9 (3) participated in at least fifty percent of
10 all emergency response calls for which the fire department held
11 the member responsible to attend.

12 B. The chief of each fire department shall submit
13 to the association by March 31 of each year documentation of
14 the qualifications of each member for the preceding calendar
15 year; provided that the chief shall:

16 (1) submit the documentation on forms provided
17 by the association;

18 (2) acknowledge the truth of the records under
19 oath before a notary public; and

20 (3) have the notarized forms signed by the
21 mayor, if distributions from the fire protection fund for the
22 fire department are made to an incorporated municipality, or
23 the chair of the county commission, if distributions from the
24 fire protection fund for the fire department are made to a
25 county fire district.

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1 C. For service credit that has been earned, but not
2 credited pursuant to Subsection B of this section, a member may
3 post or adjust service credit earned for one or more calendar
4 years beginning on or after January 1, 1979; provided that the
5 member shall:

6 (1) file with the association a completed
7 "Corrected Qualification Record" or "Adjusted Qualification
8 Record" as prescribed by the board;

9 (2) acknowledge the truth of the records under
10 oath before a notary public; and

11 (3) have the notarized forms signed by the
12 mayor, if distributions from the fire protection fund for the
13 fire department are made to an incorporated municipality, or
14 the chair of the county commission, if distributions from the
15 fire protection fund for the fire department are made to a
16 county fire district.

17 D. The association may request the fire marshal
18 division of the ~~[public regulation commission]~~ department of
19 public safety to verify member qualifications submitted to the
20 association."

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

23 "12-10-4. ALL HAZARD EMERGENCY MANAGEMENT--POWERS OF THE
24 GOVERNOR.--

25 A. The governor shall have general direction and

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

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

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

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

22 (3) provide those resources and services
23 necessary to avoid or minimize economic or physical harm until
24 a situation becomes stabilized and again under local self-
25 support and control, including the provision, on a temporary,

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1 emergency basis, of lodging, sheltering, health care, food,
2 transportation or shipping necessary to protect lives or public
3 property or for any other action necessary to protect the
4 public health, safety and welfare;

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

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

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

22 SECTION 13. Section 12-10-6 NMSA 1978 (being Laws 1959,
23 Chapter 190, Section 7, as amended) is amended to read:

24 "12-10-6. MUTUAL AID AGREEMENTS.--Each political
25 subdivision may, in cooperation with other public and private

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1 agencies within the state, enter into mutual aid agreements for
2 reciprocal emergency management aid and assistance. The
3 agreements shall be consistent with the state emergency
4 operations plan, and in time of emergency it shall be the duty
5 of each local emergency management organization to render
6 assistance within its capabilities and in accordance with the
7 provisions of the program and plan promulgated by the homeland
8 security and emergency management division of the department of
9 public safety."

10 SECTION 14. Section 12-10-9 NMSA 1978 (being Laws 1959,
11 Chapter 190, Section 9, as amended) is amended to read:

12 "12-10-9. EXISTING SERVICES AND FACILITIES TO BE USED BY
13 AGENCY.--The governor, the homeland security and emergency
14 management division of the department of public safety and the
15 governing bodies of the political subdivisions of the state are
16 directed to use, in carrying out the provisions of the All
17 Hazard Emergency Management Act, the services, equipment,
18 supplies and facilities of existing departments, offices and
19 agencies of the state and its political subdivisions to the
20 maximum extent practicable, and the officers and personnel of
21 all departments, offices and agencies of the state and its
22 political subdivisions are directed to cooperate with and
23 extend their services and facilities to the governor or to the
24 [~~department~~] division or to the local coordinators of all
25 hazard emergency management throughout the state upon request."

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1 SECTION 15. Section 12-10-11 NMSA 1978 (being Laws 2002,
2 Chapter 83, Section 2, as amended) is amended to read:

3 "12-10-11. OUT-OF-STATE LICENSE HOLDERS--POWERS--
4 DUTIES.--During an emergency, a person who holds a license,
5 certificate or other permit that is issued by a state or
6 territory of the United States and that evidences the meeting
7 of qualifications for professional, mechanical or other skills
8 may be credentialed, if appropriate and approved by the
9 department of health or the homeland security and emergency
10 management division of the department of public safety, to
11 render aid involving those skills to meet an emergency, subject
12 to limitations and conditions as the governor may prescribe by
13 executive order or otherwise. A person shall be considered a
14 public employee for the purposes of the Tort Claims Act when
15 approved to perform those duties."

16 SECTION 16. Section 12-10-13 NMSA 1978 (being Laws 2002,
17 Chapter 83, Section 4, as amended) is amended to read:

18 "12-10-13. IN-STATE LICENSE HOLDERS--POWERS--DUTIES.--
19 During an emergency, a person who holds a license, certificate
20 or other permit that is issued by the state and that evidences
21 the meeting of qualifications for professional, mechanical or
22 other skills may be credentialed, if appropriate and approved
23 by the department of health or the homeland security and
24 emergency management division of the department of public
25 safety, to render aid involving those skills to meet a declared

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1 emergency, and shall be considered a public employee for the
2 purposes of the Tort Claims Act when approved to perform those
3 duties."

4 SECTION 17. Section 12-10A-3 NMSA 1978 (being Laws 2003,
5 Chapter 218, Section 3, as amended) is amended to read:

6 "12-10A-3. DEFINITIONS.--As used in the Public Health
7 Emergency Response Act:

8 A. "attorney general" means the New Mexico attorney
9 general;

10 B. "court" means the district court for the judicial
11 district where a public health emergency is occurring, the
12 district court for Santa Fe county or, in the event that a
13 district court cannot adequately provide services, a district
14 court designated by the New Mexico supreme court;

15 C. "director" or "state director" means the [state]
16 director of the homeland security and emergency management
17 division of the department of public safety or the [state]
18 director's designee;

19 D. "health care supplies" means medication, durable
20 medical equipment, instruments, linens or any other material
21 that the state may need to use in a public health emergency,
22 including supplies for preparedness, mitigation and recovery;

23 E. "health facility" means:

24 (1) a facility licensed by the state pursuant to
25 the provisions of the Public Health Act;

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1 (2) a nonfederal facility or building, whether
2 public or private, for-profit or nonprofit, that is used,
3 operated or designed to provide health services, medical
4 treatment, nursing services, rehabilitative services or
5 preventive care;

6 (3) a federal facility, when the appropriate
7 federal entity provides its consent; or

8 (4) the following properties when they are used
9 for, or in connection with, health-related activities:

10 (a) laboratories;

11 (b) research facilities;

12 (c) pharmacies;

13 (d) laundry facilities;

14 (e) health personnel training and lodging
15 facilities;

16 (f) patient, guest and health personnel food
17 service facilities; and

18 (g) offices or office buildings used by
19 persons engaged in health care professions or services;

20 F. "isolation" means the physical separation for
21 possible medical care of persons who are infected or who are
22 reasonably believed to be infected with a threatening
23 communicable disease or potential threatening communicable
24 disease from non-isolated persons to protect against the
25 transmission of the threatening communicable disease to

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1 non-isolated persons;

2 G. "public health emergency" means the occurrence or
3 imminent threat of exposure to an extremely dangerous condition
4 or a highly infectious or toxic agent, including a threatening
5 communicable disease, that poses an imminent threat of
6 substantial harm to the population of New Mexico or any portion
7 thereof;

8 H. "public health official" means the secretary of
9 health or the secretary's designee, including a qualified
10 public individual or group or a qualified private individual or
11 group, as determined by the secretary of health;

12 I. "quarantine" means the precautionary physical
13 separation of persons who have or may have been exposed to a
14 threatening communicable disease or a potentially threatening
15 communicable disease and who do not show signs or symptoms of a
16 threatening communicable disease, from non-quarantined persons,
17 to protect against the transmission of the disease to non-
18 quarantined persons;

19 J. "secretary of health" means the secretary of
20 health or the secretary's designee;

21 K. "secretary of public safety" means the secretary
22 of public safety or the secretary's designee; and

23 L. "threatening communicable disease" means a disease
24 that causes death or great bodily harm that passes from one
25 person to another and for which there are no means by which the

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1 public can reasonably avoid the risk of contracting the
2 disease. "Threatening communicable disease" does not include
3 acquired immune deficiency syndrome or other infections caused
4 by the human immunodeficiency virus."

5 SECTION 18. Section 12-10B-3 NMSA 1978 (being Laws 2006,
6 Chapter 97, Section 3) is amended to read:

7 "12-10B-3. INTRASTATE MUTUAL AID COMMITTEE CREATED--
8 MEMBERSHIP--MEETINGS--DUTIES--EXPENSES.--

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

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1 purposes only.

2 B. The committee shall:

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

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

7 (3) examine issues facing member jurisdictions
8 in the implementation of intrastate mutual aid;

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

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

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

15 (c) record keeping for member jurisdictions;
16 and

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

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

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

25 (1) members representing the state, its agencies

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1 or political subdivisions shall receive per diem and mileage
2 expenses as provided in the Per Diem and Mileage Act paid by
3 their sponsors;

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

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

11 SECTION 19. Section 12-10D-2 NMSA 1978 (being Laws 2009,
12 Chapter 111, Section 2) is amended to read:

13 "12-10D-2. DEFINITIONS.--As used in the Emergency
14 Communications Interoperability Act:

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

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

21 (1) a law enforcement officer;

22 (2) a firefighter or certified volunteer
23 firefighter; and

24 (3) an emergency medical services provider;

25 C. "infrastructure equipment" means the underlying

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1 fixed equipment required to establish interoperable
2 communications between radio systems used by local, state,
3 tribal and federal agencies and first responders; and

4 D. "interoperability" means coordination of critical
5 information communication systems or networks, including radio
6 and emergency coordination information equipment, that are
7 consistently operable with all relevant local, state, tribal
8 and federal agencies and first responders."

9 SECTION 20. Section 12-10D-3 NMSA 1978 (being Laws 2009,
10 Chapter 111, Section 3) is amended to read:

11 "12-10D-3. INTEROPERABILITY PLANNING COMMISSION--
12 CREATED.--

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

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

20 C. The commission consists of twelve members,
21 including:

- 22 (1) the lieutenant governor;
23 (2) the ~~[homeland security advisor]~~ director of
24 the division;
25 (3) the secretary of information technology or

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1 the secretary's designee;

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

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

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

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

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

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

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

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

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

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

23 E. Members of the commission, or their designees, who
24 are not supported by public money may be reimbursed for per
25 diem and mileage pursuant to the Per Diem and Mileage Act, but

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1 shall not receive any other compensation, perquisite or
2 allowance."

3 SECTION 21. Section 12-12-19 NMSA 1978 (being Laws 1983,
4 Chapter 80, Section 3, as amended) is amended to read:

5 "12-12-19. DEFINITIONS.--As used in the Hazardous
6 Materials Emergency Response Act:

7 A. "accident" means an event involving hazardous
8 materials that may cause injury to persons or damage to
9 property or release hazardous materials to the environment;

10 B. "administrator" means the hazardous materials
11 emergency response administrator;

12 C. "board" means the hazardous materials safety
13 board;

14 D. "chief" means the chief of the New Mexico state
15 police;

16 E. "commission" means the state emergency response
17 commission;

18 F. "department" or "division" means the homeland
19 security and emergency management division of the department of
20 public safety;

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

22 ~~[G-]~~ H. "emergency management" means the ability to
23 prepare for, respond to, mitigate, recover and restore the
24 scene of an institutional, industrial, transportation or other
25 accident;

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1 ~~[H-]~~ I. "first responder" means the first law
2 enforcement officer or other public service provider with a
3 radio-equipped vehicle to arrive at the scene of an accident;

4 ~~[I-]~~ J. "hazardous materials" means hazardous
5 substances, radioactive materials or a combination of hazardous
6 substances and radioactive materials;

7 ~~[J-]~~ K. "hazardous substances" means flammable
8 solids, semisolids, liquids or gases; poisons; corrosives;
9 explosives; compressed gases; reactive or toxic chemicals;
10 irritants; or biological agents, but does not include
11 radioactive materials;

12 ~~[K-]~~ L. "orphan hazardous materials" means hazardous
13 substances, radioactive materials, a combination of hazardous
14 substances and radioactive materials or substances used in the
15 manufacture of controlled substances in violation of the
16 Controlled Substances Act where an owner of the substances or
17 materials cannot be identified;

18 ~~[L-]~~ M. "plan" means the statewide hazardous
19 materials emergency response plan;

20 ~~[M-]~~ N. "radioactive materials" means any material or
21 combination of materials that spontaneously emits ionizing
22 radiation. Materials in which the estimated specific activity
23 is not greater than 0.002 microcuries per gram of material are
24 not considered to be radioactive materials unless determined to
25 be so by the ~~[hazardous and radioactive materials bureau of the~~

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1 ~~water and waste management division of the~~] department of
2 environment for purposes of emergency response pursuant to the
3 Hazardous Materials Emergency Response Act;

4 [N-] Q. "responsible state agency" means an agency
5 designated in Subsection D of Section 12-12-21 NMSA 1978 with
6 responsibility for managing a certain type of accident or
7 performing certain functions at the scene of such accident; and

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

11 SECTION 22. Section 12-12-21 NMSA 1978 (being Laws 1983,
12 Chapter 80, Section 5, as amended by Laws 2007, Chapter 290,
13 Section 11 and by Laws 2007, Chapter 291, Section 29) is
14 amended to read:

15 "12-12-21. STATE POLICE EMERGENCY RESPONSE OFFICER--
16 PROCEDURE FOR NOTIFICATION--COOPERATION OF OTHER STATE AGENCIES
17 AND LOCAL GOVERNMENTS.--

18 A. The [state] director, in addition to having final
19 authority to administer the provisions of the Hazardous
20 Materials Emergency Response Act, shall be responsible for
21 central coordination and communication in the event of an
22 accident.

23 B. The chief shall designate one or more persons to
24 be known as "state police emergency response officers". A
25 state police emergency response officer shall be trained in

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1 accident evaluation and emergency response and shall be
2 available to answer an emergency response call from the first
3 responder.

4 C. In the event of an accident, if the first
5 responder is a law enforcement officer, the officer shall
6 immediately notify the state police district emergency response
7 officer in the officer's area, who shall in turn immediately
8 notify the state police emergency response center. If the
9 first responder is a person with radio capability tied into the
10 radio communications protocol or reporting structure with the
11 department of information technology, the person shall
12 immediately notify Santa Fe control, [~~who~~] which shall in turn
13 immediately notify the state police emergency response center.
14 The state police emergency response center shall:

- 15 (1) evaluate and determine the scope of the
16 accident based on information provided by the first responder;
- 17 (2) instruct the first responder on how to
18 proceed at the accident scene;
- 19 (3) immediately notify the [state] director and
20 the appropriate responsible state agency and advise it of the
21 necessary response;
- 22 (4) notify the sheriff or chief of police in
23 whose jurisdiction the accident occurred; and
- 24 (5) coordinate field communications and summon
25 additional resources requested by the emergency management

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1 team.

2 D. The responsible state agencies shall be:

3 (1) the New Mexico state police division of the
4 department of public safety for coordination, law enforcement
5 and traffic and crowd control;

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

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

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

16 (5) the homeland security and emergency
17 management division of the department of public safety and the
18 department of military affairs for assistance with accidents
19 that require the evacuation of the vicinity of the accident or
20 the use of the national guard of New Mexico; and

21 (6) the department of transportation for
22 assistance with road closures, designating alternate routes and
23 related services.

24 E. Other state agencies and local governments shall
25 assist the responsible state agencies when requested to do so.

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1 F. Any driver of a vehicle carrying hazardous
2 materials involved in an accident that may cause injury to
3 persons or property or any owner, shipper or carrier of
4 hazardous materials involved in an accident who has knowledge
5 of such accident or any owner or person in charge of any
6 building, premises or facility where such an accident occurs
7 shall immediately notify the New Mexico state police division
8 of the department of public safety by the quickest means of
9 communication available."

10 SECTION 23. Section 12-12-23 NMSA 1978 (being Laws 1984,
11 Chapter 41, Section 6, as amended) is amended to read:

12 "12-12-23. HAZARDOUS MATERIALS EMERGENCY RESPONSE
13 ADMINISTRATOR--CREATED--DUTIES.--The position of "hazardous
14 materials emergency response administrator" is created within
15 the ~~[homeland security and emergency management department]~~
16 division. The ~~[state]~~ director shall assign the
17 administrator's duties."

18 SECTION 24. Section 12-12A-2 NMSA 1978 (being Laws 2008,
19 Chapter 47, Section 2) is amended to read:

20 "12-12A-2. DEFINITIONS.--As used in the Uniform Emergency
21 Volunteer Health Practitioners Act:

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

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

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

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

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

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

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

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

25 ~~[F-]~~ G. "health facility" means an entity licensed

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1 pursuant to the laws of this or another state to provide health
2 or veterinary services;

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

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

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

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

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

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

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

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

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1 ~~[J-]~~ K. "license" means authorization by a state to
2 engage in health or veterinary services that are unlawful
3 without the authorization. "License" includes authorization
4 pursuant to the laws of this state to an individual to provide
5 health or veterinary services based upon a national
6 certification issued by a public or private entity;

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

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

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

22 ~~[N-]~~ O. "veterinary services" means the provision of
23 treatment, care, advice or guidance, or other services or
24 supplies, related to the health or death of an animal or to
25 animal populations, to the extent necessary to respond to an

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1 emergency, including:

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

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

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

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

22 SECTION 25. Section 12-12A-4 NMSA 1978 (being Laws 2008,
23 Chapter 47, Section 4) is amended to read:

24 "12-12A-4. REGULATION OF SERVICES DURING EMERGENCY.--

25 A. While an emergency declaration is in effect, the

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1 ~~[homeland security and emergency management department]~~
2 division may limit, restrict or otherwise regulate:
3 (1) the duration of practice by volunteer health
4 practitioners;
5 (2) the geographical areas in which volunteer
6 health practitioners may practice;
7 (3) the types of volunteer health practitioners
8 who may practice; and
9 (4) any other matters necessary to coordinate
10 effectively the provision of health or veterinary services
11 during the emergency.
12 B. An order issued pursuant to Subsection A of this
13 section may take effect immediately, without prior notice or
14 comment.
15 C. A host entity that uses volunteer health
16 practitioners to provide health or veterinary services in this
17 state shall:
18 (1) consult and coordinate its activities with
19 the ~~[homeland security and emergency management department]~~
20 division to the extent practicable to provide for the efficient
21 and effective use of volunteer health practitioners; and
22 (2) comply with any laws other than the Uniform
23 Emergency Volunteer Health Practitioners Act relating to the
24 management of emergency health or veterinary services,
25 including the Emergency Medical Services Act and the All Hazard
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1 Emergency Management Act."
2 **SECTION 26.** Section 12-12A-5 NMSA 1978 (being Laws 2008,
3 Chapter 47, Section 5) is amended to read:
4 "12-12A-5. VOLUNTEER HEALTH PRACTITIONER REGISTRATION
5 SYSTEMS.--
6 A. To qualify as a volunteer health practitioner
7 registration system, a system shall:
8 (1) accept applications for the registration of
9 volunteer health practitioners before or during an emergency;
10 (2) include information about the licensure and
11 good standing of health practitioners that is accessible by
12 authorized persons;
13 (3) be capable of confirming the accuracy of
14 information concerning whether a health practitioner is
15 licensed and in good standing before health services or
16 veterinary services are provided pursuant to the Uniform
17 Emergency Volunteer Health Practitioners Act; and
18 (4) meet one of the following conditions:
19 (a) be an emergency system for advance
20 registration of volunteer health care practitioners established
21 by a state and funded through the health resources services
22 administration pursuant to Section 319I of the federal Public
23 Health Service Act, 42 U.S.C. Section 247d-7b, as amended;
24 (b) be a local unit consisting of trained
25 and equipped emergency response, public health and medical
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1 personnel formed pursuant to Section 2801 of the Public Health
2 Service Act, 42 U.S.C. Section 300hh, as amended;

3 (c) be operated by a: 1) disaster relief
4 organization; 2) licensing board; 3) national or regional
5 association of licensing boards or health practitioners; 4)
6 health facility that provides comprehensive inpatient and
7 outpatient health care services, including a tertiary care and
8 teaching hospital; or 5) governmental entity; or

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

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

24 C. Upon request of a person in this state authorized
25 pursuant to Subsection B of this section or a similarly

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1 authorized person in another state, a registration system
2 located in this state shall notify the person of the identities
3 of volunteer health practitioners and whether the volunteer
4 health practitioners are licensed and in good standing.

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

10 **SECTION 27.** Section 12-12A-8 NMSA 1978 (being Laws 2008,
11 Chapter 47, Section 8) is amended to read:

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

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

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

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1 C. The [~~homeland security and emergency management~~
2 ~~department~~] division may modify or restrict the health or
3 veterinary services that volunteer health practitioners may
4 provide pursuant to the Uniform Emergency Volunteer Health
5 Practitioners Act. An order pursuant to this subsection may
6 take effect immediately, without prior notice or comment.

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

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

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

25 (2) from all the facts and circumstances known

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1 to the volunteer health practitioner at the relevant time, a
2 reasonable person would conclude that the limitation,
3 modification or restriction exists or that a similarly licensed
4 practitioner in this state would not be permitted to provide
5 the service.

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

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

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

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

22 G. In determining whether to impose administrative
23 sanctions pursuant to Subsection F of this section, a licensing
24 board or other disciplinary authority shall consider the
25 circumstances in which the conduct took place, including any

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1 exigent circumstances, and the health practitioner's scope of
2 practice, education, training, experience and specialized
3 skill."

4 SECTION 28. Section 12-12A-10 NMSA 1978 (being Laws 2008,
5 Chapter 47, Section 10) is amended to read:

6 "12-12A-10. REGULATORY AUTHORITY.--The [~~homeland security~~
7 ~~and emergency management department~~] division may promulgate
8 rules to implement the Uniform Emergency Volunteer Health
9 Practitioners Act. In doing so, the [~~homeland security and~~
10 ~~emergency management department~~] division shall consult with
11 and consider the recommendations of the entity established to
12 coordinate the implementation of the Emergency Management
13 Assistance Compact and shall also consult with and consider
14 rules promulgated by similarly empowered agencies in other
15 states to promote uniformity of application of the Uniform
16 Emergency Volunteer Health Practitioners Act and make the
17 emergency response systems in the various states reasonably
18 compatible."

19 SECTION 29. Section 15-8-6 NMSA 1978 (being Laws 1994,
20 Chapter 119, Section 6, as amended by Laws 2009, Chapter 8,
21 Section 1 and by Laws 2009, Chapter 129, Section 1 and also by
22 Laws 2009, Chapter 250, Section 6) is amended to read:

23 "15-8-6. STATE VEHICLES--USE--MARKINGS--STATE GOVERNMENT
24 PLATES.--

25 A. The division shall adopt rules governing the use

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1 of vehicles used by state agencies or by other persons pursuant
2 to Subsection G of this section, including driver requirements
3 and responsibilities, under what circumstances someone can be
4 assigned a state vehicle on a permanent or semipermanent basis
5 and when custody of a state vehicle can be vested in another
6 state agency.

7 B. The division may determine that it is impractical
8 to retain custody of certain state vehicles, and it may provide
9 that custody reside in another state agency in the following
10 cases:

11 (1) the state vehicle is used for emergency or
12 law enforcement purposes; or

13 (2) the state vehicle is a department of
14 transportation, energy, minerals and natural resources
15 department, department of game and fish or homeland security
16 and emergency management division of the department of public
17 safety passenger vehicle, truck or tractor or heavy road
18 equipment.

19 C. Except as provided in Subsections E and F of this
20 section, all state vehicles shall be marked as state vehicles.
21 Each side of the vehicle shall be marked, in letters not less
22 than two inches in height, with the following designation of
23 ownership: "State of New Mexico,..... Department" or "State
24 of New Mexico Department of" and naming the
25 department using the vehicle.

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1 D. Except as provided in Subsections E and F of this
2 section, all state vehicles shall have specially designed
3 government registration plates.

4 E. Only state vehicles used for legitimate undercover
5 law enforcement purposes are exempt from the requirements of
6 Subsections C and D of this section. All other state vehicles
7 owned or in the custody of state agencies that have law
8 enforcement functions shall be marked and have state government
9 registration plates.

10 F. A state agency may seek custody of state vehicles
11 as an exception to Subsection B of this section or an exemption
12 to the provisions of Subsection C of this section by making a
13 written request to the director, specifying the reasons for the
14 proposed custody or exemption. The director may approve the
15 custody or exemption, in writing, indicating the duration and
16 any conditions of the custody or exemption.

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

21 SECTION 30. Section 59A-52-1 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 947, as amended) is amended to read:

23 "59A-52-1. STATE FIRE MARSHAL CREATED.--The position of
24 "state fire marshal" is created as the director of the fire
25 marshal division ~~[under]~~ of the ~~[public regulation commission]~~

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1 department of public safety."

2 SECTION 31. Section 59A-52-3 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 949, as amended) is amended to read:

4 "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER EMPLOYEES--
5 QUALIFICATIONS OF DEPUTY.--The state fire marshal may employ,
6 with the consent of the ~~[chief of staff of the public regulation~~
7 ~~commission]~~ secretary of public safety, deputy state fire
8 marshals and other employees to assist in the execution of the
9 marshal's duties."

10 SECTION 32. Section 59A-52-21 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 967, as amended) is amended to read:

12 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND
13 MODIFICATIONS.--Any person aggrieved by any order of the state
14 fire marshal ~~[his]~~ or the marshal's deputy, ~~[or]~~ authorized
15 officer or ~~[his]~~ designated agent ~~[may appeal to the commission]~~
16 shall have the opportunity to appeal to the secretary of public
17 safety within ten days from the date of the service of ~~[such]~~
18 the order. The ~~[commission]~~ secretary or the secretary's
19 designee shall hear ~~[such]~~ the party within twenty days after
20 receipt of an appeal request and shall give not less than ten
21 days' written notice of the hearing. Within fifteen days after
22 ~~[such]~~ the hearing, the ~~[commission]~~ secretary shall file ~~[it]~~
23 a decision and, unless by ~~[its]~~ the secretary's authority the
24 order is revoked or modified, ~~[it]~~ the order shall be complied
25 with within the time fixed in the decision, with such time to be

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1 not less than thirty days."

2 SECTION 33. Section 59A-52-23 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 969, as amended) is amended to read:

4 "59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS.--After
5 expiration of time for an administrative appeal, and if no such
6 appeal has been taken, the state fire marshal may commence an
7 action in the district court for Santa Fe county to enforce
8 ~~[the]~~ a cease and desist order by injunction or other
9 appropriate remedy as the district court may adjudge. The
10 ~~[commission]~~ secretary of public safety may likewise commence an
11 action in the district court for Santa Fe county to enforce its
12 decision rendered on appeal from the cease and desist order of
13 the state fire marshal."

14 SECTION 34. Section 59A-53-6 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 977, as amended) is amended to read:

16 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION.--The marshal
17 shall promptly notify each incorporated city, town, village and
18 county fire district affected of ~~[his]~~ the marshal's
19 determination of needs, and an incorporated city, town, village
20 or county fire district may appeal from the determination of the
21 marshal to the ~~[commission]~~ secretary of public safety, within
22 ten days after the determination of needs. The ~~[commission]~~
23 secretary or the secretary's designee shall review the
24 determination of the marshal in such informal and summary
25 proceedings as ~~[it]~~ the secretary or secretary's designee deems
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1 proper and shall certify to the state treasurer annually, on or
2 before the last day of June, the results of all appeals from the
3 determinations of the marshal. The certification by the
4 ~~[commission]~~ secretary, or by the marshal if no appeal is taken,
5 shall be final and binding on all concerned and not subject to
6 any further review."

7 SECTION 35. Section 59A-53-7 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 978, as amended) is amended to read:

9 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND.--

10 A. Annually on or before the last day of July, the
11 state treasurer shall distribute from the money in the fire
12 protection fund, to each incorporated municipality and to each
13 county fire district, the amount the marshal or the
14 ~~[commission]~~ secretary of public safety, as the case may be,
15 has certified to the state treasurer. Payment shall be made to
16 the treasurer of any incorporated municipality and to the
17 county treasurer of the county in which any county fire
18 district is located for credit to the county fire district.

19 B. The state treasurer is authorized to redirect a
20 distribution to the New Mexico finance authority in the amount
21 the marshal or the ~~[commission]~~ secretary of public safety, as
22 the case may be, has certified to the state treasurer pursuant
23 to an ordinance or a resolution passed by the municipality or
24 county and a written agreement of the municipality or county in
25 which any county fire district is located and the New Mexico
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1 finance authority.

2 C. In addition to the distributions made pursuant to
3 Subsections A and B of this section, upon certification by the
4 marshal that the balance of the firefighters' survivors fund is
5 less than fifty thousand dollars (\$50,000), the state treasurer
6 shall distribute an amount from the fire protection fund to the
7 firefighters' survivors fund so that the balance of the
8 firefighters' survivors fund equals fifty thousand dollars
9 (\$50,000)."

10 SECTION 36. Section 59A-53-19 NMSA 1978 (being Laws 2006,
11 Chapter 103, Section 8, as amended) is amended to read:

12 "59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

13 A. The "fire protection grant council" is created.

14 ~~[Subject to the requirements of Subsection B of this section]~~

15 The council shall consist of:

16 (1) a representative of the New Mexico municipal
17 league;

18 (2) a representative of the New Mexico
19 association of counties;

20 (3) two members appointed by the ~~[public~~
21 ~~regulation commission]~~ secretary of public safety, who shall
22 serve at the pleasure of the ~~[commission]~~ secretary;

23 (4) three members, one from each congressional
24 district, appointed by the governor, who shall serve at the
25 pleasure of the governor; and

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1 (5) the marshal, who shall serve as a nonvoting
2 advisory member. The council shall elect a chair and vice
3 chair from its membership.

4 ~~[B. No appointee to the council shall be a member of~~
5 ~~the public regulation commission, the superintendent of~~
6 ~~insurance or any other employee of the commission.~~

7 ~~C.]~~ B. The public members are entitled to receive per
8 diem and mileage as provided in the Per Diem and Mileage Act
9 and shall receive no other compensation, perquisite or
10 allowance.

11 ~~D.]~~ C. The council shall develop criteria for
12 assessing the critical needs of municipal and county fire
13 districts for:

14 (1) fire apparatus and equipment;

15 (2) communications equipment;

16 (3) equipment for wildfires;

17 (4) fire station construction or expansion;

18 (5) equipment for hazardous material response;

19 and

20 (6) stipends for volunteer firefighters in
21 underserved areas.

22 ~~E.]~~ D. Applications for grant assistance from the
23 fire protection grant fund shall be made by fire districts to
24 the council in accordance with the requirements of the council.
25 Using criteria developed by the council, the council shall

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1 evaluate applications and prioritize those applications most in
2 need of grant assistance from the fund. To the extent that
3 money in the fund is available, the council shall award grant
4 assistance for those prioritized applications.

5 ~~[F-]~~ E. In awarding grant assistance, the council may
6 require conditions and procedures necessary to ensure that the
7 money is expended in the most prudent manner.

8 ~~[G-]~~ F. When considering applications for grant
9 assistance to pay stipends to volunteer firefighters in
10 underserved areas, the council shall:

11 (1) define "underserved area";

12 (2) ensure the proposed stipends will comply
13 with the federal Fair Labor Standards Act of 1938 and United
14 States department of labor requirements for maintaining
15 volunteer status;

16 (3) require a basic level of training before a
17 volunteer may receive a stipend;

18 (4) consider whether the fire district requires
19 a service commitment from its volunteer firefighters in
20 exchange for stipends; and

21 (5) weight the applications against other
22 criteria or requirements determined by the council."

23 **SECTION 37.** Section 63-9D-3 NMSA 1978 (being Laws 1989,
24 Chapter 25, Section 3, as amended) is amended to read:

25 "63-9D-3. DEFINITIONS.--As used in the Enhanced 911 Act:

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1 A. "911 emergency surcharge" means the monthly
2 uniform charge assessed on each access line in the state ~~[and]~~,
3 on each active number for a commercial mobile radio service
4 subscriber whose billing address is in New Mexico, on each
5 active number for an interconnected voice over internet
6 protocol provider and on any other consumer purchase of
7 communication services provided by a communication service
8 provider;

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

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

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

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

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

25 (3) a personal communications service; or

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1 (4) a network radio access line;
2 E. "commercial mobile radio service provider" means a
3 person who provides commercial mobile radio services, including
4 a person who purchases commercial mobile radio service from a
5 provider and resells that service;
6 F. [~~"commission" means the public regulation~~
7 ~~commission~~] "communication service" means any service that:
8 (1) uses a telephone line, a wireless real-time
9 two-way voice communication device, interconnected voice over
10 internet protocol address, electronic data networks or
11 protocols or a functional equivalent;
12 (2) is capable of access to, connecting with or
13 interfacing with the enhanced 911 system; and
14 (3) provides or enables real-time or interactive
15 communication;
16 G. "communication service provider" means a person
17 who provides communication services;
18 [~~G.~~] H. "database" means information that is
19 collected, formatted and disseminated and that is necessary for
20 the functioning of the enhanced 911 system, including
21 geographic information system (GIS) addressing and digital
22 mapping information;
23 [~~H.~~] I. "department" means the taxation and revenue
24 department;
25 [~~I.~~] J. "division" means the [~~local government~~

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1 ~~division of the department of finance and administration]~~
2 enhanced 911 division of the department of public safety;
3 K. "emergency services internet protocol network"
4 means an internet-protocol-based, multipurpose network
5 supporting local, regional, state and national public safety
6 communication services in addition to enhanced 911;
7 [~~J.~~] L. "enhanced 911 system" means a landline,
8 emergency services internet protocol network, next generation
9 911 system or wireless system consisting of network switching
10 equipment, database, mapping and on-premises equipment that
11 uses the single three-digit number 911 for reporting police,
12 fire, medical or other emergency situations, thereby enabling a
13 caller to reach a public safety answering point to report
14 emergencies by dialing 911, and includes the capability to:
15 (1) selectively route incoming 911 calls to the
16 appropriate public safety answering point operating in a 911
17 service area;
18 (2) automatically display the name, address and
19 telephone number of an incoming 911 call on a video monitor at
20 the appropriate public safety answering point;
21 (3) provide one or more access paths for
22 communications between users at different geographic locations
23 through a network system that may be designed for voice or
24 data, or both, and may feature limited or open access and may
25 employ appropriate analog, digital switching, internet protocol

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1 or transmission technologies; and

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

7 ~~[K-]~~ M. "enhanced 911 equipment" means the public
8 safety answering point equipment directly related to the
9 operation of an enhanced 911 system, including automatic number
10 identification or automatic location identification controllers
11 and display units, printers, logging recorders and software
12 associated with call detail recording, call center work
13 stations, training, latitude and longitude base station or cell
14 site location data and GIS equipment necessary to obtain and
15 process vocational map and emergency service zone data for
16 landline, ~~[and]~~ wireless, emergency services internet protocol
17 network and next generation 911 system callers;

18 ~~[L-]~~ N. "equipment supplier" means a person who
19 provides or offers to provide ~~[telecommunications]~~
20 communications equipment necessary for the establishment of
21 enhanced 911 services;

22 ~~[M-]~~ O. "fiscal agent" means the local governing body
23 that administers grants from the fund for a given locality or
24 region by agreement;

25 ~~[N-]~~ P. "fund" means the enhanced 911 fund;

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1 Q. "interconnected voice over internet protocol
2 provider" means a person who provides interconnected voice over
3 internet protocol services;

4 R. "interconnected voice over internet protocol
5 service" means a real-time two-way voice communication service
6 that requires:

7 (1) a broadband connection; and

8 (2) internet protocol-compatible customer
9 premises equipment;

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

13 T. "next generation 911 technology" means technology
14 developed as part of the United States department of
15 transportation's next generation 911 technology initiative and
16 intended to:

17 (1) provide standardized interfaces from call
18 and message services;

19 (2) process all forms of emergency calls,
20 including non-vocal multimedia messages;

21 (3) acquire and integrate additional data useful
22 to call routing and handling;

23 (4) deliver calls, messages and data to the
24 appropriate public safety answering point and other emergency
25 entities;

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1 (5) support data and communications needs for
2 coordinated incident response and management; and

3 (6) provide a secure environment for emergency
4 communications;

5 [P-] U. "proprietary information" means customer
6 lists, customer counts, technology descriptions or trade
7 secrets, including the actual or development costs of
8 individual components of an enhanced 911 system; provided that
9 such information is designated as proprietary by the
10 ~~[commercial mobile radio] communication~~ service provider ~~[or~~
11 ~~telecommunications company]~~; and provided further that
12 "proprietary information" does not include individual payments
13 made by the division or any list of names and identifying
14 information of subscribers who have not paid the surcharge;

15 [Q+] V. "public safety answering point" means a
16 twenty-four-hour ~~[local]~~ communications facility that receives
17 911 service calls and directly dispatches emergency response
18 services or that relays calls to the appropriate public or
19 private safety agency;

20 [R+] W. "subscriber" means a person who ~~[is a retail~~
21 ~~purchaser of telecommunications services]~~ purchases
22 communication services from a communication service provider

23 that are capable of originating a 911 call;

24 [S+] X. "surcharge" means the 911 emergency
25 surcharge;

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1 [F+] Y. "telecommunications company" means a person
2 who provides wire telecommunications services that are capable
3 of originating a 911 call; and

4 [U+] Z. "vendor" means a person that provides 911
5 equipment, service or network support."

6 SECTION 38. Section 63-9D-5 NMSA 1978 (being Laws 1989,
7 Chapter 25, Section 5, as amended) is amended to read:

8 "63-9D-5. IMPOSITION OF SURCHARGE.--

9 A. There is imposed a 911 emergency surcharge in the
10 amount of fifty-one cents (\$.51) to be billed to each
11 subscriber access line by a ~~[telecommunications company]~~
12 communication service provider and on each active number for a
13 commercial mobile radio service subscriber ~~[whose billing~~
14 ~~address is in New Mexico]~~. The surcharge shall be imposed on
15 all communication service subscribers and commercial mobile
16 radio service subscribers whose place of primary use, as
17 defined in the federal Mobile Telecommunications Sourcing Act;
18 provided, however, that the surcharge shall not be imposed upon
19 subscribers receiving reduced rates pursuant to the Low Income
20 Telephone Service Assistance Act.

21 B. ~~[Commercial mobile radio] Communication~~ service
22 providers shall ~~[be required to]~~ bill and collect the surcharge
23 from their subscribers whose places of primary use, as defined
24 in the federal Mobile Telecommunications Sourcing Act, are in
25 New Mexico. ~~[Telecommunications companies shall be required to~~

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1 ~~bill and collect the surcharge from their subscribers.]~~ The
2 surcharge ~~[required to be collected by the commercial mobile~~
3 ~~radio service provider, or telecommunications company]~~ shall be
4 added to and stated clearly and separately in the billings to
5 the subscriber. The surcharge collected by the ~~[commercial~~
6 ~~mobile radio]~~ communication service provider ~~[telecommunications~~
7 ~~company]~~ shall not be considered revenue of the ~~[commercial~~
8 ~~mobile radio]~~ communication service provider ~~[or~~
9 ~~telecommunications company]~~.

10 C. A billed subscriber is liable for payment of the
11 911 emergency surcharge until it has been paid to the
12 ~~[commercial mobile radio]~~ communication service provider ~~[or~~
13 ~~telecommunications company]~~.

14 D. A ~~[commercial mobile radio]~~ communication service
15 provider ~~[or telecommunications company]~~ has no obligation to
16 take legal action to enforce the collection of the surcharge;
17 an action may be brought by or on behalf of the department. A
18 ~~[commercial mobile radio]~~ communication service provider ~~[or~~
19 ~~telecommunications company]~~, upon request and not more than
20 once a year, shall provide to the department a list of the
21 surcharge amounts uncollected, along with the names and
22 addresses of subscribers who carry a balance that can be
23 determined by the ~~[commercial mobile radio]~~ communication
24 service provider ~~[or telecommunications company]~~ to be
25 nonpayment of the surcharge. The ~~[commercial mobile radio]~~

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1 communication service provider ~~[or telecommunications company]~~
2 shall not be held liable for uncollected surcharge amounts.

3 E. The surcharge shall commence with the first
4 billing period of each communication service subscriber on or
5 ~~[following]~~ after July 1, ~~[2005]~~ 2011."

6 SECTION 39. A new section of the Enhanced 911 Act is
7 enacted to read:

8 "[NEW MATERIAL] IMPOSITION OF SURCHARGE ON PREPAID
9 WIRELESS COMMUNICATION SERVICES--COLLECTION--ADMINISTRATION--
10 LIABILITY.--

11 A. There is imposed a 911 emergency surcharge in the
12 amount of one and eight-tenths percent of each purchase for a
13 prepaid wireless communication service.

14 B. A seller shall bill and collect the surcharge from
15 the consumer purchasing the prepaid wireless communication
16 service in New Mexico. The purchase of the prepaid wireless
17 communication service is considered purchased in New Mexico if
18 the seller is located in the state or if the transaction for
19 the service is treated as occurring in this state for the
20 purposes of the Gross Receipts and Compensating Tax Act. The
21 surcharge shall be added to and stated clearly and separately
22 in the invoice, receipt or other similar document provided to
23 the consumer or otherwise disclosed to the consumer.

24 C. The consumer is liable for payment of the
25 surcharge, except that the seller is liable to remit the

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1 surcharge collected from a consumer to the department as
2 provided in this section.

3 D. The amount of the prepaid wireless communication
4 service surcharge shall not be included in the base for
5 measuring any tax, fee or other charge that is imposed by this
6 state, any political subdivision of the state or any
7 intergovernmental agency.

8 E. The audit and appeal procedures applicable under
9 the Tax Administration Act shall apply to remittance of prepaid
10 wireless communication service surcharges. The department may
11 bring action against a seller to enforce collection of the
12 surcharge.

13 F. The department shall establish procedures by which
14 a seller may document that a sale does not qualify as a retail
15 transaction. Such procedures shall coincide with the
16 procedures for documenting sale for resale transactions for the
17 Gross Receipts and Compensating Tax Act.

18 G. No provider or seller of prepaid wireless
19 communication services shall be liable for damages to any
20 person resulting from or incurred in connection with the
21 enhanced 911 services provided, or not provided, or for
22 identifying, or failing to identify, the telephone number,
23 address, location or name associated with any person or device
24 that is accessing or attempting to access enhanced 911 service.

25 H. No provider or seller of prepaid wireless
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1 communication services shall be liable for damages to any
2 person resulting from or incurred in connection with the
3 provision of any lawful assistance to any investigative or law
4 enforcement officer of the United States, this or any other
5 state or any political subdivision of this or any other state,
6 in connection with any lawful investigation or other law
7 enforcement activity by such law enforcement officer.

8 I. In addition to the immunity provided in
9 Subsections G and H of this section, each provider and seller
10 of prepaid wireless communication services shall be entitled to
11 the immunity provided in Section 63-9D-10 NMSA 1978.

12 J. As used in this section:

13 (1) "consumer" means a person who purchases
14 prepaid wireless communication service, if such purchase is not
15 intended for resale;

16 (2) "prepaid wireless communication service"
17 means a wireless communication service that allows a caller to
18 access the enhanced 911 system, which service must be paid for
19 in advance and is sold in predetermined units or dollars;

20 (3) "provider" means a person that provides
21 prepaid wireless communication services pursuant to a license
22 issued by the federal communications commission; and

23 (4) "seller" means a person who sells prepaid
24 wireless communication services to another person."

25 SECTION 40. Section 63-9D-7 NMSA 1978 (being Laws 1989,
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1 Chapter 25, Section 7, as amended) is amended to read:

2 "63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE.--

3 A. The surcharge collected by a communication service
4 provider shall be remitted monthly to the department, which
5 shall administer and enforce collection of the surcharge in
6 accordance with the Tax Administration Act. The surcharge
7 shall be remitted to the department no later than the twenty-
8 fifth day of the month following the month in which the
9 surcharge was imposed. At that time, a return for the
10 preceding month shall be filed with the department in such form
11 as the department and [~~telecommunications company or commercial~~
12 ~~mobile radio~~] the communication service provider shall agree
13 upon. A [~~telecommunications company or commercial mobile~~
14 ~~radio~~] communication service provider required to file a return
15 shall deliver the return together with a remittance of the
16 amount of the surcharge payable to the department. The
17 [~~telecommunications company or commercial mobile radio~~]
18 communication service provider shall maintain a record of the
19 amount of each surcharge collected pursuant to the Enhanced 911
20 Act. The record shall be maintained for a period of three
21 years after the time the surcharges were collected.

22 B. The surcharge collected for a prepaid wireless
23 communication service, as defined in Paragraph (2) Subsection J
24 of Section 39 of this 2011 act, shall be remitted to the
25 department by the seller, as defined in Paragraph (4) of that

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1 subsection, at the times and in the manner provided in the
2 Gross Receipts and Compensating Tax Act. The department shall
3 establish registration and payment procedures that
4 substantially coincide with the registration and payment
5 procedures that apply to the Gross Receipts and Compensating
6 Tax Act.

7 [~~B-~~] C. From a remittance to the department made on
8 or before the date it becomes due, a [~~telecommunications~~
9 ~~company or commercial mobile radio~~] communication service
10 provider or prepaid wireless communication service provider
11 required to make a remittance shall be entitled to deduct and
12 retain one percent of the collected amount or fifty dollars
13 (\$50.00), whichever is greater, as the administrative cost for
14 collecting the surcharge."

15 SECTION 41. Section 63-9D-8 NMSA 1978 (being Laws 1989,
16 Chapter 25, Section 8, as amended) is amended to read:

17 "63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--
18 DISBURSEMENT--REPORTS TO LEGISLATURE.--

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

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

24 C. Money deposited in the fund and income earned by
25 investment of the fund are appropriated for expenditure in

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1 accordance with the Enhanced 911 Act and shall not revert to
2 the general fund.

3 D. Payments shall be made from the fund to, or on
4 behalf of, participating local governing bodies or their fiscal
5 agents upon vouchers signed by the director of the division
6 solely for the purpose of reimbursing local governing bodies or
7 their fiscal agents [~~commercial mobile radio~~] or communication
8 service providers [~~or telecommunications companies~~] for their
9 costs of providing enhanced 911 service. A person who
10 purchases [~~commercial mobile radio~~] communication services [~~or~~
11 ~~telecommunications services~~] from a [~~commercial mobile radio~~]
12 communication service provider [~~or telecommunications company~~]
13 for the purpose of reselling that service is not eligible for
14 reimbursement from the fund. Money in the fund may be used for
15 the payment of bonds issued pursuant to the Enhanced 911 Bond
16 Act.

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

21 F. Money in the fund may be awarded as grant
22 assistance to provide enhanced 911 service and equipment upon
23 application of local governing bodies or their fiscal agents to
24 the division and upon approval by the state board of finance.
25 If it is anticipated that the funds available to pay all

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1 requests for grants will be insufficient, the state board of
2 finance may reduce the percentage of assistance to be awarded.
3 In the event of such reduction, the state board of finance may
4 award supplemental grants to local governing bodies that
5 demonstrate financial hardship.

6 G. After requesting enhanced 911 service from a
7 [~~telecommunications company or commercial mobile radio~~]
8 communication service provider, a local governing body may, by
9 ordinance or resolution, recover from the fund an amount
10 necessary to recover the costs of providing the enhanced 911
11 system in its designated 911 service area. The division, on
12 behalf of local governing bodies, shall directly pay or
13 reimburse [~~commercial mobile radio~~] communication service
14 providers [~~and telecommunications companies~~] for their costs of
15 providing enhanced 911 service. If a [~~commercial mobile radio~~]
16 communication service provider [~~or telecommunications company~~]
17 does not receive payment or reimbursement for the costs of
18 providing enhanced 911 service, the provider is not obligated
19 to provide that service.

20 H. Pursuant to Section 45 of this 2011 act, money in
21 the fund may be used by the division to provide for a statewide
22 enhanced 911 system and for implementation of next generation
23 911 technology or an emergency services internet protocol
24 network.

25 [H+] I. The division shall report to the legislature

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1 each session the status of the fund and whether the current
2 level of the 911 emergency surcharge is sufficient, excessive
3 or insufficient to fund the anticipated needs for the next
4 year."

5 SECTION 42. Section 63-9D-8.1 NMSA 1978 (being Laws 1990,
6 Chapter 87, Section 3, as amended) is amended to read:

7 "63-9D-8.1. DIVISION POWERS.--

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

10 B. The division may fund enhanced 911 systems
11 pursuant to the provisions of the Enhanced 911 Act.

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

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

17 E. Unless otherwise provided by law, no rule
18 affecting any person, agency, local governing body [~~commercial~~
19 ~~mobile radio~~] or communication service provider [~~or~~
20 ~~telecommunications company~~] shall be adopted, amended or
21 repealed without a public hearing on the proposed action before
22 the director of the division or a hearing officer designated by
23 the director. The public hearing shall be held in Santa Fe
24 unless otherwise permitted by statute. Notice of the subject
25 matter of the rule, the action proposed to be taken, the time

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1 and place of the hearing, the manner in which interested
2 persons may present their views and the method by which copies
3 of the proposed rule or proposed amendment or repeal of an
4 existing rule may be obtained shall be published once at least
5 thirty days prior to the hearing in a newspaper of general
6 circulation and mailed at least thirty days prior to the
7 hearing date to all persons or agencies who have made a written
8 request for advance notice of the hearing and to all local
9 governing bodies [~~telecommunications companies and commercial~~
10 ~~mobile radio~~] and communication service providers.

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

13 SECTION 43. Section 63-9D-10 NMSA 1978 (being Laws 1989,
14 Chapter 25, Section 10, as amended) is amended to read:

15 "63-9D-10. IMMUNITY.--Enhanced 911 systems are within the
16 governmental powers and authorities of the local governing body
17 or state agency in the provision of services for the public
18 health, welfare and safety. In contracting for such services
19 or the provisioning of an enhanced 911 system, except for
20 willful or wanton negligence or intentional acts, the local
21 governing body, public agency, equipment supplier,
22 [~~telecommunications company, commercial mobile radio~~
23 communication service provider and their employees and agents
24 are not liable for damages resulting from installing,
25 maintaining or providing enhanced 911 systems or transmitting

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1 911 calls."

2 SECTION 44. Section 63-9D-11 NMSA 1978 (being Laws 1989,
3 Chapter 25, Section 11, as amended) is amended to read:

4 "63-9D-11. PRIVATE LISTING SUBSCRIBERS AND 911 SERVICE.--

5 A. Private listing subscribers waive the privacy
6 afforded by nonlisted or nonpublished numbers only to the
7 extent that the name and address associated with the telephone
8 number may be furnished to the enhanced 911 system for call
9 routing or for automatic retrieval of location information in
10 response to a call initiated to 911.

11 B. Information regarding the identity of private
12 listing subscribers who subscribe to any communication service
13 offered by a communication service provider, including names,
14 addresses, telephone numbers or other identifying information,
15 is not a public record and is not available for inspection.

16 C. Proprietary information provided by a [~~commercial~~
17 ~~mobile radio~~] communication service provider [~~or~~
18 ~~telecommunications company~~] is not public information and [~~may~~]
19 shall not be released to any person without the express
20 permission of the submitting provider, except that information
21 may be released or published as aggregated data that does not
22 identify the number of subscribers or identify enhanced 911
23 system costs attributable to an individual [~~commercial mobile~~
24 ~~radio~~] communication service provider [~~or telecommunications~~
25 ~~company~~]."

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1 SECTION 45. A new section of the Enhanced 911 Act is
2 enacted to read:

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

5 A. The division shall work with the department of
6 information technology to provide a statewide enhanced 911
7 system that includes next generation 911 technology and an
8 emergency services internet protocol network.

9 B. A local governing body that controls a public
10 safety answering point shall connect to the statewide enhanced
11 911 system once the statewide enhanced 911 system is fully
12 operational.

13 C. The department of information technology shall
14 provide all technical infrastructure needed for the development
15 of a statewide enhanced 911 system, including next generation
16 911 technologies and an emergency services internet protocol
17 network."

18 SECTION 46. Section 63-9D-11.1 NMSA 1978 (being Laws
19 1993, Chapter 48, Section 13) is amended to read:

20 "63-9D-11.1. VIOLATION--PENALTIES.--

21 A. Any person who knowingly dials 911 for the purpose
22 of reporting a false alarm, making a false complaint or
23 reporting false information that results in an emergency
24 response by any public safety agency is guilty of a petty
25 misdemeanor and shall be punished by a fine of not more than

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1 five hundred dollars (\$500) or imprisonment for a term not to
2 exceed six months, or both.

3 B. A municipality or county may adopt an ordinance
4 making it a violation for any person to knowingly dial 911 for
5 the purpose of reporting a false alarm, making a false
6 complaint or reporting false information that results in an
7 emergency response by any public safety agency. The
8 municipality may adopt and enforce the ordinance pursuant to
9 the authority provided in Section 3-17-1 NMSA 1978. The county
10 may adopt and enforce the ordinance pursuant to the authority
11 provided in Section 4-37-1 NMSA 1978."

12 SECTION 47. Section 63-9D-13 NMSA 1978 (being Laws 1990,
13 Chapter 61, Section 2, as amended) is amended to read:

14 "63-9D-13. DEFINITIONS.--As used in the Enhanced 911 Bond
15 Act:

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

17 B. "division" means the [~~local government division of~~
18 ~~the department of finance and administration~~] enhanced 911
19 division of the department of public safety;

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

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

25 E. "enhanced 911 revenue" means the revenue to and

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1 the income of the enhanced 911 fund that are pledged to the
2 payment of enhanced 911 bonds under the Enhanced 911 Bond Act."

3 SECTION 48. Section 63-9D-14 NMSA 1978 (being Laws 1990,
4 Chapter 61, Section 3, as amended) is amended to read:

5 "63-9D-14. ENHANCED 911 BONDS--AUTHORITY TO ISSUE--PLEDGE
6 OF REVENUES--LIMITATION ON ISSUANCE.--

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

11 B. Enhanced 911 bonds may be issued for:

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

16 (2) reimbursing a [~~commercial mobile radio~~]
17 communication service provider, [~~or telecommunications company~~]
18 as defined in Subsection G of Section 63-9D-3 NMSA 1978, for
19 its reasonable costs of providing enhanced 911 service, the
20 payment of which shall be secured by enhanced 911 revenues;

21 [~~or~~]

22 (3) reimbursing a local governing body or its
23 fiscal agent for its reasonable costs of providing the enhanced
24 911 system, the payment of which shall be secured by enhanced
25 911 revenues; or

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1 (4) reimbursing the division or the department
2 of information technology for its reasonable costs of providing
3 a statewide enhanced 911 system, emergency services internet
4 protocol network and next generation 911 technology programs,
5 as defined in Section 63-9D-3 NMSA 1978.

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

14 SECTION 49. Section 74-4E-3 NMSA 1978 (being Laws 1989,
15 Chapter 149, Section 3, as amended) is amended to read:

16 "74-4E-3. DEFINITIONS.--As used in the Hazardous
17 Chemicals Information Act:

18 A. "commission" means the state emergency response
19 commission;

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

23 C. "emergency responder" means any law enforcement
24 officer, firefighter, medical services professional or other
25 person trained and equipped to respond to hazardous chemical

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1 releases;

2 D. "hazardous chemical" means any hazardous chemical,
3 extremely hazardous substance, toxic chemical or hazardous
4 material as defined by Title 3;

5 E. "facility owner or operator" means any individual,
6 trust, firm, joint stock company, corporation, partnership,
7 association, state agency, municipality or county having legal
8 control or authority over buildings, equipment, structures and
9 other stationary items that are located on a single site or on
10 contiguous or adjacent sites. For the purposes of Section
11 74-4E-5 NMSA 1978, the term includes owners or operators of
12 motor vehicles, rolling stock and aircraft;

13 F. "local emergency planning committee" means any
14 local group appointed by the commission to undertake chemical
15 release contingency planning;

16 G. "release" means any spilling, leaking, pumping,
17 pouring, emitting, emptying, discharging, injecting, escaping,
18 leaching, dumping or disposing into the environment of any
19 hazardous chemical, extremely hazardous substance or toxic
20 chemical. "Release" includes the abandonment or discarding of
21 barrels, containers and other closed receptacles; and

22 H. "Title 3" means the federal Emergency Planning and
23 Community Right-to-Know Act of 1986."

24 SECTION 50. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
25 APPROPRIATIONS AND PROPERTY--CONTRACTUAL OBLIGATIONS--STATUTORY

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1 REFERENCES.--

2 A. On the effective date of this act, all functions,
3 appropriations, money, records, furniture, equipment and other
4 property of the following agencies shall be transferred to the
5 department of public safety:

6 (1) the homeland security and emergency
7 management department;

8 (2) the fire marshal division of the public
9 regulation commission; and

10 (3) the local government division of the
11 department of finance and administration relating to the
12 Enhanced 911 Act and the Enhanced 911 Bond Act.

13 B. On the effective date of this act, contractual
14 obligations of the following agencies are binding on the
15 department of public safety:

16 (1) the homeland security and emergency
17 management department;

18 (2) the fire marshal division of the public
19 regulation commission; and

20 (3) the local government division of the
21 department of finance and administration relating to the
22 Enhanced 911 Act and the Enhanced 911 Bond Act.

23 C. On the effective date of this act, all references
24 in the law to the homeland security and emergency management
25 department shall be deemed to be references in law to the

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1 homeland security and emergency management division of the
2 department of public safety. All references in the law to the
3 state director of homeland security and emergency management or
4 to the secretary of homeland security and emergency management
5 shall be deemed to be references to the director of the
6 homeland security and emergency management division of the
7 department of public safety.

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

13 SECTION 51. TEMPORARY PROVISION--RECOMPILATION.--Sections
14 8-8-9.1 and 8-8-9.3 NMSA 1978 (being Laws 2001, Chapter 80,
15 Section 1 and Laws 2007, Chapter 161, Section 4) are recompiled
16 in the Department of Public Safety Act.

17 SECTION 52. REPEAL.--Sections 9-28-1 through 9-28-7 NMSA
18 1978 (being Laws 2007, Chapter 291, Sections 1 through 6 and
19 35, as amended) are repealed.

20 SECTION 53. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2011.

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