

SENATE BILL NO. 140

INTRODUCED BY GEBHARDT

BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN INTRASTATE MUTUAL AID SYSTEM TO AID IN REQUESTING ASSISTANCE FOR AND RESPONDING TO LOCAL EMERGENCIES AND DISASTERS; ALLOWING A POLITICAL SUBDIVISION OF THE STATE TO WITHDRAW FROM PARTICIPATION IN THE INTRASTATE MUTUAL AID SYSTEM; CREATING THE MONTANA INTRASTATE MUTUAL AID COMMITTEE AND DESCRIBING ITS MEMBERSHIP, DUTIES, AND AUTHORITY; ALLOWING FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA TO PARTICIPATE IN THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR ADMINISTRATION OF THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR GOVERNMENTAL IMMUNITY FROM LIABILITY UNDER CERTAIN CONDITIONS; AMENDING SECTION 10-3-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

WHEREAS, a system for statewide mutual aid among the state's political subdivisions and Indian tribes does not exist; and

WHEREAS, emergencies and disasters transcend political jurisdictional boundaries; and

WHEREAS, the timely commitment of available resources to emergencies and disasters can save lives and protect property; and

WHEREAS, intergovernmental coordination and cooperation are essential for the protection of lives and property during emergencies and disasters; and

WHEREAS, intergovernmental preparation for potential emergencies and disasters is critical to effectively and efficiently respond to actual emergencies and disasters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 44 12] may be cited as the "Statewide Mutual Aid System Act".

NEW SECTION. SECTION 2. POLICY -- PURPOSE. (1) IT IS THE POLICY OF THE STATE THAT:



1 (A) AVAILABLE RESOURCES SHOULD BE MADE AVAILABLE WHENEVER POSSIBLE AND PRACTICAL TO MINIMIZE THE
 2 NEGATIVE IMPACTS OF DISASTERS AND EMERGENCIES, REGARDLESS OF THE POLITICAL JURISDICTION IN THIS STATE
 3 WITHIN WHICH THE DISASTER OR EMERGENCY OCCURS AND REGARDLESS OF THE POLITICAL JURISDICTIONS FROM WHICH
 4 A REQUEST FOR ASSISTANCE ARISES OR FROM WHICH OR TO WHICH THE RESOURCES ARE MADE AVAILABLE;

5 (B) AGREEMENTS, EITHER FORMAL OR INFORMAL, WRITTEN OR ORAL, BETWEEN OR AMONG POLITICAL
 6 SUBDIVISIONS OF THIS STATE, THAT EXIST OR ARE ENTERED INTO FOR THE PURPOSE OF PROVIDING MUTUAL AID IN THE
 7 EVENT OF A DISASTER OR EMERGENCY SHOULD REMAIN OPTIONS FOR POLITICAL SUBDIVISIONS AND SHOULD NOT BE
 8 INFRINGED UPON OR IN ANY WAY AFFECTED BY THE PROVISIONS OF [SECTIONS 1 THROUGH 12]; AND

9 (C) IN PARTICULAR, THE PROVISIONS OF [SECTIONS 1 THROUGH 12] DO NOT AFFECT ANY MUTUAL AID AGREEMENT,
 10 EITHER FORMAL OR INFORMAL, WRITTEN OR ORAL, THAT IS MADE OR THAT MAY BE MADE PURSUANT TO TITLE 7, CHAPTER
 11 33, 10-3-209, OR 10-3-703 OR A REQUEST FOR ASSISTANCE OR AID OR ASSISTANCE OR AID PROVIDED OR RECEIVED
 12 PURSUANT TO TITLE 7, CHAPTER 33, 10-3-209, OR 10-3-703.

13 (2) IT IS THE PURPOSE OF [SECTIONS 1 THROUGH 12] TO:

14 (A) ESTABLISH AN EFFECTIVE AND EFFICIENT MUTUAL AID SYSTEM IN WHICH A POLITICAL JURISDICTION CAN
 15 CHOOSE TO PARTICIPATE THAT CAN OPERATE SEPARATE FROM YET INTEGRATED WITH OTHER FREESTANDING MUTUAL
 16 AID SYSTEMS OR AGREEMENTS;

17 (B) PROVIDE TO POLITICAL JURISDICTIONS IN THE STATE ANOTHER OPTION FOR ESTABLISHING MUTUAL AID
 18 AGREEMENTS AND FOR REQUESTING, PROVIDING, AND RECEIVING MUTUAL AID; AND

19 (C) ALLOW POLITICAL JURISDICTIONS MAXIMUM FLEXIBILITY TO PROTECT LIFE AND PROPERTY THROUGH MUTUAL
 20 AID AGREEMENTS.

21
 22 NEW SECTION. Section 3. Statewide mutual aid system -- definitions. As used in [sections 1
 23 through ~~44~~ 12], the following definitions apply:

24 (1) "Committee" means the Montana intrastate mutual aid committee created in [section 3 4].

25 (2) "Disaster" has the meaning provided in 10-3-103.

26 (3) "Emergency" has the meaning provided in 10-3-103.

27 (4) "Member jurisdiction" means a political subdivision or a federally recognized Indian tribe that
 28 participates in the system.

29 (5) "System" means the Montana intrastate mutual aid system provided for in [section 5 6].

30

1 **NEW SECTION. Section 4. Montana intrastate mutual aid committee -- members -- officers --**
2 **meetings -- compensation.** (1) There is a Montana intrastate mutual aid committee.

3 (2) All members of the committee must be appointed by and serve at the pleasure of the state
4 emergency response commission established in 10-3-1204.

5 (3) The committee shall elect from among its members a presiding officer, a vice presiding officer, and
6 any other officers considered necessary or advisable by the committee.

7 (4) The committee shall meet at least annually and may meet at the call of the presiding officer or as
8 otherwise considered necessary or advisable by two-thirds of the members.

9 (5) Members of the committee are not entitled to compensation or to reimbursement for expenses
10 incurred for serving on or participating in the activities of the committee. This subsection does not preclude a
11 member jurisdiction from compensating or reimbursing the expenses of a committee member.

12

13 **NEW SECTION. Section 5. Montana intrastate mutual aid committee -- duties.** The committee
14 shall:

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

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

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

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

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

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

22 (c) recordkeeping for all member jurisdictions; and

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

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

27

28 **NEW SECTION. Section 6. Intrastate mutual aid system -- initial participation -- withdrawing.** (1)
29 There is a Montana intrastate mutual aid system. The system is composed of and may be described as:

30 (a) the member jurisdictions and any action taken by a member jurisdiction pursuant to [sections 1

1 through ~~44~~ 12];

2 (b) the committee and any action taken by the committee pursuant to [sections 1 through ~~44~~ 12];

3 (c) the guidelines and procedures described in [section ~~4(4)~~ 5(4)];

4 (d) any action taken with respect to requesting assistance for an emergency or disaster under [sections
5 1 through ~~44~~ 12]; and

6 (e) any action taken with respect to responding to a request for assistance for an emergency or disaster
7 under [sections 1 through ~~44~~ 12].

8 (2) Except as provided in subsection (4), every political subdivision of the state is part of the system.

9 (3) A federally recognized Indian tribe that is located within the boundaries of the state may be a member
10 jurisdiction upon:

11 (a) adoption by the tribal government of a resolution declaring the tribe's desire to be a member
12 jurisdiction; and

13 (b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

14 (4) A member jurisdiction may elect not to participate or to withdraw from the system upon:

15 (a) adopting a resolution or ordinance declaring that the member jurisdiction elects not to participate
16 in the system; and

17 (b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

18 (5) This section does not preclude a member jurisdiction from entering into any other agreement with
19 another political subdivision and does not affect any other agreement to which a political subdivision is a party
20 or may become a party.

21
22 **NEW SECTION. Section 7. Intrastate mutual aid system -- request for assistance.** (1) A member
23 jurisdiction may request assistance from another member jurisdiction:

24 (a) to prevent, mitigate, respond to, or recover from an emergency or disaster; or

25 (b) in concert with drills or exercises between member jurisdictions.

26 (2) A request for assistance must be made by or through the presiding officer of the governing body of
27 the member jurisdiction or the chief executive officer or the chief executive officer's designee of a member
28 jurisdiction. A request may be verbal or in writing and is not required to go directly to the division, as defined in
29 10-3-103. If a request is verbal, the request must be confirmed in writing within 30 days of the date on which
30 the request was made.

1

2 **NEW SECTION. Section 8. Intrastate mutual aid system -- limitation on assistance -- command**3 **and control.** A member jurisdiction's obligation to provide assistance to prevent, respond to, or recover from
4 an emergency or disaster or in drills or exercises is subject to the following conditions:5 (1) A member jurisdiction that responds to a request for assistance from a requesting member
6 jurisdiction may withhold resources to the extent necessary to provide reasonable protection and services for
7 the responding jurisdiction.

8 (2) The personnel of a responding member jurisdiction are under:

9 (a) the command control of the responding jurisdiction for purposes that include medical protocols,
10 standard operating procedures, and other protocols; and11 (b) the operational control of the appropriate officials of the member jurisdiction receiving the
12 assistance.

13 (3) The assets and equipment of a responding member jurisdiction are under:

14 (a) the command control of the responding jurisdiction; and

15 (b) the operational control of the appropriate officials of the member jurisdiction receiving the
16 assistance.

17

18 **NEW SECTION. Section 9. Intrastate mutual aid system -- portability of bona fides.** If a person19 or entity holds a license, certificate, permit, or similar documentation that evidences the person's or entity's
20 qualifications in a professional, mechanical, or other skill and the assistance of the person or entity is requested
21 by a member jurisdiction, the person or entity is:22 (1) considered to be licensed, certified, permitted, or otherwise documented in the member jurisdiction
23 that requests assistance for the duration of the emergency or disaster or of the drills or exercises; and24 (2) subject to any legal limitations or conditions prescribed by the governing body or chief executive of
25 the member jurisdiction that receives the assistance.

26

27 **NEW SECTION. Section 10. Intrastate mutual aid system -- reimbursement -- dispute resolution.**28 (1) A requesting member jurisdiction shall reimburse each member jurisdiction that responds to a request for
29 aid or assistance and renders aid under the system unless the member jurisdiction rendering aid donates all or
30 a portion of the cost of the assistance to the requesting member jurisdiction.

1 (2) A request for reimbursement must be in accordance with procedures developed by the committee.

2 (3) If a dispute regarding reimbursement arises between a party that requested assistance under the
3 system and a party that provided assistance under the system, the involved parties shall make every effort to
4 resolve the dispute within 30 days of written notice of the dispute given by the party asserting noncompliance
5 to the other party.

6 (4) (a) If the dispute is not resolved within 90 days from the date of the notice, either party may request
7 that the dispute be resolved through arbitration.

8 (b) All arbitration occurring under this section must be conducted pursuant to the commercial arbitration
9 rules and mediation procedures of the American arbitration association as the rules and procedures exist on the
10 date of notification described in subsection (3).

11
12 **NEW SECTION. Section 11. Intrastate mutual aid system -- workers' compensation coverage.**

13 (1) If a person is an employee of a member jurisdiction that responds to a request for assistance from a member
14 jurisdiction and the person sustains injury in the course of providing the requested assistance, the person is
15 entitled to all applicable benefits, including workers' compensation benefits, normally available to the person as
16 an employee of the member jurisdiction that employs the person.

17 (2) If the person's injury results in the person's death, the person's estate must receive any additional
18 state and federal benefits that may be available for death in the line of duty.

19
20 **NEW SECTION. Section 12. Liability -- immunity.** (1) All activities performed pursuant to a request
21 for assistance as provided for in [sections 1 through 44 ~~12~~] are considered to be governmental functions.

22 (2) Except as provided in [section 40 ~~11~~], a person responding to a request for assistance who is under
23 the operational control of the requesting member jurisdiction, as provided for in [section 7 ~~8~~], is considered for
24 the purposes of liability to be an employee of the requesting member jurisdiction.

25 (3) Except in the case of willful misconduct, gross negligence, or bad faith, the member jurisdiction or
26 an employee of the member jurisdiction is immune from liability for the death of or injury to any person or for
27 damage to property if the member jurisdiction or the employee of the member jurisdiction is complying with or
28 attempting to comply with the system.

29
30 **Section 13.** Section 10-3-1204, MCA, is amended to read:

1 **"10-3-1204. State emergency response commission.** (1) There is a state emergency response
2 commission that is attached to the department for administrative purposes. The commission consists of 27
3 members appointed by the governor. The commission must include representatives of the national guard, the
4 air force, the department of environmental quality, the division, the department of transportation, the department
5 of justice, the department of natural resources and conservation, the department of public health and human
6 services, a fire service association, the fire training school, the emergency medical services and injury prevention
7 section of the health policy and services division in the department of public health and human services, the
8 department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law
9 enforcement association, an emergency management association, a public health-related association, a trucking
10 association, a utility company doing business in Montana, a railroad company doing business in Montana, the
11 university system, a local emergency planning committee, a tribal emergency response commission, the national
12 weather service, the Montana association of counties, the Montana league of cities and towns, and the office
13 of the governor. Members of the commission serve a term of 4 years and may be reappointed. The members
14 shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who
15 shall act as copresiding officers.

16 (2) The commission shall implement the provisions of this part, ~~and in so doing, the~~ The commission
17 may create and implement a state hazardous material incident response team to respond to incidents. The
18 members of the team must be certified in accordance with the plan.

19 (3) The commission may enter into written agreements with each entity or person providing equipment
20 or services to the state hazardous material incident response team.

21 (4) The commission or its designee may direct that the state hazardous material incident response team
22 be available and respond, when requested by a local emergency response authority, to incidents according to
23 the plan.

24 (5) The commission may contract with persons to meet state emergency response needs for the state
25 hazardous material incident response team.

26 (6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the
27 state and federal government, other states and their state agencies, cities, counties, tribal governments, and
28 other persons concerned with emergency response and matters relating to and arising out of incidents.

29 (7) The commission may encourage, participate in, or conduct studies, investigations, training, research,
30 and demonstrations for and with the state hazardous material incident response team, local emergency

1 responders, and other interested persons.

2 (8) The commission may collect and disseminate information relating to emergency response to
3 incidents.

4 (9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise,
5 made to the state for emergency response activities provided for in this part.

6 (10) The commission may prepare, coordinate, implement, and update a plan, ~~which~~ that coordinates
7 state and local emergency authorities; to respond to incidents within the state. The plan must be consistent with
8 this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

9 (11) The commission has the powers and duties of a state emergency response commission under the
10 federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that
11 the division shall oversee the creation, annual local review, and exercise and revision of the local emergency
12 operations plan as provided by state law.

13 (12) The commission shall promulgate rules and procedures limited to cost recovery procedures,
14 certification of state response team members, and deployment of the state hazardous material incident response
15 team, which must be a part of the plan.

16 (13) The commission shall act as an all-hazard advisory board to the division by:

17 (a) assisting the division in carrying out its responsibilities by providing the division with
18 recommendations on issues pertaining to all-hazard emergency management; and

19 (b) authorizing the establishment of subcommittees to develop and provide the recommendations called
20 for in subsection (13)(a).

21 (14) The commission shall appoint the members of the Montana intrastate mutual aid committee
22 provided for in [section 3 4].

23 ~~(14)~~(15) All state agencies and institutions shall cooperate with the commission in the commission's
24 efforts to carry out its duties under this part."

25
26 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through ~~44~~ 12] are intended to be
27 codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1
28 through ~~44~~ 12].

29
30 **NEW SECTION. Section 15. Two-thirds vote required -- contingent voidness.** Because [section

1 ~~44(3)~~ 12(3) limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of
2 two-thirds of the members of each house of the legislature for passage. If [this act] is not approved by at least
3 two-thirds of the members of each house of the legislature, then [section ~~44(3)~~ 12(3)] is void.

4
5 NEW SECTION. Section 16. Notification to tribal governments. The secretary of state shall send
6 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
7 band of Chippewa.

8
9 NEW SECTION. Section 17. Saving clause. [This act] does not affect rights and duties that matured,
10 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

11
12 NEW SECTION. Section 18. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
14 the part remains in effect in all valid applications that are severable from the invalid applications.

15
16 NEW SECTION. Section 19. Effective date. [This act] is effective on passage and approval.

17
18 NEW SECTION. Section 20. Applicability. (1) [This act], except [sections ~~6 7~~ through ~~44 12~~], applies
19 on [the effective date of this act].

20 (2) [Sections ~~6 7~~ through ~~44 12~~] apply October 1, 2005.

21
22 NEW SECTION. Section 21. Transition. Because [section ~~3 4~~], creating the Montana intrastate mutual
23 aid committee, is effective and applicable on passage and approval, the state emergency response commission
24 established in 10-3-1204 will not have had the opportunity to appoint the members of the committee. Therefore,
25 the state emergency response commission shall appoint the members of the Montana intrastate mutual aid
26 committee before August 1, 2005.

27 - END -