



AN ACT PROVIDING DISASTER AND EMERGENCY SERVICES TO FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA; ALLOWING TRIBAL GOVERNMENTS TO REQUEST ASSISTANCE FROM THE GOVERNOR; AUTHORIZING EXPENDITURES WHEN JUSTIFIED BY A TRIBAL DISASTER OR EMERGENCY; REINSTATING SPENDING AUTHORITY WHEN EXPENDED FUNDS ARE RECOVERED; PROVIDING ASSISTANCE IN OBTAINING FEDERAL COMMUNITY DISASTER LOANS FOR TRIBAL GOVERNMENTS; PROVIDING FOR DEBRIS AND WRECKAGE REMOVAL FOR TRIBAL GOVERNMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-105, 10-3-310, 10-3-311, 10-3-313, 10-3-314, AND 10-3-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-3-101, MCA, is amended to read:

"10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to ensure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or human-caused disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, ~~and~~ local governments, and tribal

governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, mitigation, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state, and its political subdivisions, and tribal governments may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in ~~either~~ the state, tribal government, or federal emergency or disaster declarations."

Section 2. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving

weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Disaster medicine" means the provision of patient care by a health care provider during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and treatment of persons needing care.

(6) "Division" means the division of disaster and emergency services of the department.

(7) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(8) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(9) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(10) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(11) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

(12) "Tribal government" means the government of a federally recognized Indian tribe within the state of Montana.

~~(12)~~(13) "Volunteer professional" means an individual with an active, unrestricted license to practice a profession under the provisions of Title 37, Title 50, or the laws of another state."

Section 3. Section 10-3-105, MCA, is amended to read:

"10-3-105. Division of disaster and emergency services -- duties. (1) A division of disaster and emergency services is established in the department. The division must have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, tribal governments, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, tribal governments, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor."

Section 4. Section 10-3-310, MCA, is amended to read:

"10-3-310. Incident response -- authority -- appropriation -- expenditures -- recovery -- rules. (1)

The governor may by executive order upon request of the local governing body, ~~or its authorized agent,~~ or a tribal government activate that part of the state disaster and emergency plan pertaining to incident response. The order may be issued for any year, for any part of a year, or upon occurrence of an incident.

(2) Upon approval of an executive order pursuant to this section:

(a) that part of the state disaster and emergency plan pertaining to incidents becomes effective;

(b) the division may use any of the resources usable by the division during a state of emergency or disaster to respond to the incident; and

(c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor, and the governor is authorized to expend from the general fund an amount not to exceed \$10,000 per incident and not to exceed \$100,000 for incidents in a biennium.

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident

response costs of the state and may not be used to reimburse a local government or tribal government for incident response costs incurred by that local government or tribal government.

(4) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

(5) The department may adopt rules to implement this section."

Section 5. Section 10-3-311, MCA, is amended to read:

"10-3-311. Emergency or disaster expenditures -- restrictions. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, ~~which that~~ results in damage to the works, buildings, or property of the state, ~~or any political subdivision thereof of the state, or a tribal government~~ or ~~which that~~ menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, including an Indian reservation, upon demonstration by the political jurisdiction, including a tribal government, that:

(a) ~~such the~~ political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in a sufficient amount to meet the emergency or disaster; or

(c) federal funds available for ~~such the~~ emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) ~~No expenditures~~ Expenditures for flood-related damages may not be made to assist a political subdivision or tribal government that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 CFR, and does not have in effect adequate regulations for ~~such those~~ areas or has failed to enforce ~~such~~ regulations ~~as~~ required by the national flood insurance program.

(3) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

~~(3)~~(4) The governor is charged with the implementation of the program.

~~(4)~~(5) The administration and development of rules for implementation of this section must be promulgated by the department."

Section 6. Section 10-3-313, MCA, is amended to read:

"10-3-313. Temporary housing for disaster victims -- site acquisition and preparation. (1)

Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make the units available to any political subdivision of the state or to any tribal government;

(b) to assist any political subdivision of this state or any tribal government that is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision or tribal government for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under regulations that the governor prescribes, to temporarily suspend or modify for not to exceed 60 days any state laws or regulations relating to public health, safety, zoning, or transportation, within or across the state, when by proclamation the governor declares the suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, that are necessary to prepare or equip the sites to utilize the housing units.

(3) Parts 1 through 4 of this chapter may not be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery."

Section 7. Section 10-3-314, MCA, is amended to read:

"10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon the governor's determination that a political subdivision of the state or that a tribal government will suffer a substantial loss of tax and other revenue from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision or tribal government, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision or tribal government.

(2) to determine the amount needed by any applicant political subdivision or tribal government to restore or resume its governmental functions and to certify the same to the federal government. However, the application amount may not exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenue of the political subdivision or tribal government is insufficient to meet its operating expenses, including additional emergency-related or disaster-related expenses of the political subdivision or tribal government."

Section 8. Section 10-3-315, MCA, is amended to read:

"10-3-315. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage ~~which~~ that may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize ~~such~~ the funds to make grants to any political subdivision or tribal government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section ~~shall~~ may not be exercised unless the affected political subdivision, tribal government, corporation, organization, or individual ~~shall~~ first ~~present~~ presents an unconditional authorization for removal of ~~such~~ the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, ~~shall~~ first ~~agree~~ agrees to indemnify the state government against any claim arising from ~~such~~ the removal.

(b) Whenever the governor provides for ~~clearance~~ the clearing of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or ~~clearance~~ clearing operation."

Section 9. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 10. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0279, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 279

INTRODUCED BY F. SMITH, BELCOURT, EVANS, HINER, PEASE-LOPEZ, MALEK, HOLLENBAUGH,
SMALL, O'NEIL, STAHL, READ, MCCHESENEY, ARNTZEN, ROBERTS, AUGARE, SANDS

AN ACT PROVIDING DISASTER AND EMERGENCY SERVICES TO FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA; ALLOWING TRIBAL GOVERNMENTS TO REQUEST ASSISTANCE FROM THE GOVERNOR; AUTHORIZING EXPENDITURES WHEN JUSTIFIED BY A TRIBAL DISASTER OR EMERGENCY; REINSTATING SPENDING AUTHORITY WHEN EXPENDED FUNDS ARE RECOVERED; PROVIDING ASSISTANCE IN OBTAINING FEDERAL COMMUNITY DISASTER LOANS FOR TRIBAL GOVERNMENTS; PROVIDING FOR DEBRIS AND WRECKAGE REMOVAL FOR TRIBAL GOVERNMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-105, 10-3-310, 10-3-311, 10-3-313, 10-3-314, AND 10-3-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.