_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING LAWS RELATED TO HOMELAND SECURITY AND EMERGENCY RESPONSE; ESTABLISHING THE HOMELAND SECURITY PROGRAM AND THE DUTIES OF THE ADVISOR AND DEPUTY ADVISOR; AMENDING SECTIONS 10-3-103, 10-3-1203, 10-3-1204, 10-3-1216, AND 10-3-1217, MCA; REPEALING SECTIONS 10-3-1208 AND 10-3-1209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 5] is to:

(1) designate statutory responsibility within the department of military affairs for coordination of homeland security functions for the state;

(2) clarify the relationship between the homeland security advisor and the division of disaster and emergency services established in 10-3-105 to ensure coordinated, nonduplicative planning and response; and

(3) provide for coordination between state government, political subdivisions, tribal governments, and owners and operators of critical infrastructure to reduce vulnerability to terrorism and other homeland security threats.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of disaster and emergency services, appointed under 10-3-105.

(2) "Advisor" means the state homeland security advisor designated under [section 4].

(3) "Critical infrastructure" has the same meaning as provided in 82-1-601. The term includes a "critical infrastructure facility" as defined in 82-1-601.

(4) "Department" has the same meaning as provided in 10-3-103.

(5) "Deputy advisor" means the deputy state homeland security advisor designated under [section 4].

(6) "Division" has the same meaning as provided in 10-3-103.

(7) "Homeland security" means the coordinated state effort to prevent, protect against, mitigate the effects of, respond to, and recover from acts of terrorism and other deliberate threats to public safety and critical infrastructure within the state.

(8) "Homeland security strategy" means the document required under [section 5(1)(a)] that establishes statewide priorities, goals, and objectives for homeland security activities.

NEW SECTION. **Section 3. Homeland security program -- placement in department.** (1) There is a homeland security program within the department. The program is administered by the advisor, under the direction of the adjutant general.

(2) The program is not a separate division within the department and does not diminish or replace the division of disaster and emergency services or any duty assigned to the division under this chapter.

(3) The department may organize staff and resources between the program and the division as necessary to avoid duplication and shall document that organization in the state homeland security strategy required under [section 5].

NEW SECTION. **Section 4. State homeland security advisor and deputy state homeland security advisor -- designation.** (1) The adjutant general shall serve as the state homeland security advisor.

(2) The administrator of the division shall serve, by virtue of that office, as the deputy state homeland security advisor.

(3) The deputy advisor shall:

(a) act as the advisor in the advisor's absence or at the advisor's direction; and

(b) assist the advisor in carrying out the duties described in [section 5].

(4) The advisor serves as the primary point of contact between the state and the United States department of homeland security and other federal agencies on matters of homeland security. The deputy

advisor may serve in that capacity at the advisor's direction or when the advisor is unavailable.

NEW SECTION. **Section 5. Duties of advisor and deputy advisor.** (1) The advisor, in coordination with the deputy advisor, shall:

(a) serve as the principal advisor to the governor on homeland security matters, including identifying statewide homeland security priorities and creating the state homeland security strategy document;

(b) coordinate the development, maintenance, and implementation of a state homeland security strategy and update the strategy at least once every 4 years or more frequently as necessary;

(c) coordinate with the division to ensure that homeland security planning is integrated with the state disaster and emergency plan required under 10-3-301;

(d) coordinate with owners and operators of critical infrastructure and critical infrastructure facilities, political subdivisions, and tribal governments to identify vulnerabilities and promote critical infrastructure protection and resilience;

(e) coordinate terrorism prevention and preparedness activities with the Montana analysis and technical information center or its successor agency and with federal, state, and local law enforcement agencies; and

(f) perform other homeland security coordination duties assigned by the governor.

(2) The deputy advisor shall perform the duties in subsection (1) in the advisor's absence and shall otherwise assist the advisor as the advisor directs, consistent with the deputy advisor's duties as administrator under 10-3-105.

Section 6. 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) "All-hazard incident management assistance team" means a team that includes any combination of personnel representing local, state, or tribal entities that has been established by the division for the purpose of local incident management intended to mitigate the impacts of an incident prior to a disaster or emergency declaration.

(2) "Civil defense" means ~~the nuclear preparedness functions and responsibilities of disaster and~~

~~emergency services~~ the range of protective measures, preparedness activities, and emergency relief functions undertaken by state and local government to protect the civilian population, critical infrastructure, and property from the effects of hostile attack, sabotage, terrorism, or other national security emergencies.

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

(4) "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.

(5) "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.

(6) "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.

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

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

(9) (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 10-3-303.

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

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

(12) "Religious organization" means:

(a) a house of worship, including but not limited to churches, mosques, shrines, synagogues, and temples; or

(b) a religious group, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a house of worship.

(13) "Religious services" means a meeting, gathering, or assembly of multiple persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that involve the exercise of religion.

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

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

(16) "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 7. Section 10-3-1203, MCA, is amended to read:

"**10-3-1203. Definitions.** As used in this part, the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disaster and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to

the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(6) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(7) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(8) "Incident commander" means the person who is designated in the local emergency operations plan.

(9) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

~~(10) "Local emergency response authority" means the agency designated by the city or county to be responsible for the management of a hazardous material incident at the local level.~~

~~(11)~~ (10) "Plan" means the hazardous material response support plan.

~~(12)~~ (11) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

~~(13)~~ (12) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment."

Section 8. Section 10-3-1204, MCA, is amended to read:

"**10-3-1204. State emergency response commission -- members -- duties -- establishment of hazardous material incident response and hazardous material incident management teams.** (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 8 members appointed by the governor. The commission must include representatives of the department of environmental quality, the division, the department of transportation and the department of public health and human services, a tribal emergency response commission member, and three people with hazardous material emergency planning experience. Members of the commission serve terms of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint the presiding officer.

(2) The commission shall implement the provisions of this part. The commission may approve regional hazardous material incident response teams to respond to hazardous material incidents. The members of the team must be certified in accordance with the plan.

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

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

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

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

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the hazardous material incident response teams, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to

incidents.

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

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local ~~emergency response authorities~~ response to ~~respond to~~ hazardous material incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to a hazardous material incident must be defined by the plan. The plan must be in accordance with and in support of the state disaster and emergency plan and program as provided in 10-3-301.

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

(a) establishing procedures for receiving and processing public requests for information collected under the federal act;

(b) appointing local emergency planning committees for each district; and

(c) supervising the activities of the local emergency planning committees.

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

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

Section 9. Section 10-3-1216, MCA, is amended to read:

"**10-3-1216. Cost recovery and civil remedies.** (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) ~~Except for the commission, the regional hazardous material incident response team, and the local emergency response authority, this~~ This part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement."

Section 10. Section 10-3-1217, MCA, is amended to read:

"**10-3-1217. Liability of persons and response team members rendering assistance.** (1) The following are not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release or remedial action resulting from the release or threatened release of a hazardous material:

(a) the state or a political subdivision of the state;

(b) the commission;

~~(c) the local emergency response authority;~~

~~(d)~~ (c) the regional hazardous material incident response team;

~~(e)~~ (d) a private emergency response team dispatched by the state, a political subdivision of the state, or a local or tribal emergency ~~response authority~~ agency that has jurisdiction for emergency response activities;

and

~~(f)~~ (e) an employee, representative, or agent of any of the entities listed in subsections (1)(a) through ~~(1)(e)~~ (1)(d), except for willful misconduct or gross negligence.

(2) The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss.

(3) A person becomes a member of the regional hazardous material incident response team when the person is contacted, dispatched, or requested for response regardless of the person's location."

NEW SECTION. **Section 11. Repealer.** The following sections of the Montana Code Annotated are repealed:

10-3-1208. Local emergency response authorities -- designation.

10-3-1209. Local emergency response authorities -- powers and duties.

NEW SECTION. **Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 5] are intended to be codified as a new part in Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 5].

NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

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