

HOUSE BILL NO. 131

INTRODUCED BY M. MENAHAN

BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT FOR THE STATE TO RECOVER FROM A CITY OR COUNTY A PERCENTAGE OF CERTAIN COSTS RELATED TO INCIDENTS INVOLVING HAZARDOUS MATERIAL OR ORPHANED HAZARDOUS MATERIAL; AND AMENDING SECTIONS 10-3-1203 AND 10-3-1216, MCA."

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

**Section 1.** 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 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.

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

1 (b) The term does not include radioactive material.

2 (7) "Incident" means an event involving the release or threat of release involving hazardous material that  
3 may cause injury to persons, the environment, or property.

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

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

7 (10) "Local emergency response authority" means the agency designated by the city, county, or  
8 commission to be responsible for the management of an incident at the local level.

9 ~~(11) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.~~

10 ~~(12)~~(11) "Plan" means the Montana incident management and hazardous material response support plan.

11 ~~(13)~~(12) (a) "Radioactive material" means any material or combination of material that spontaneously  
12 emits ionizing radiation.

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

16 ~~(14)~~(13) "State hazardous material incident response team" means persons who are designated as state  
17 employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include  
18 members of the commission and local and state government responders.

19 ~~(15)~~(14) "Threat of release" or "threatened release" means an indication of the possibility of the release  
20 of a hazardous material into the environment."

21

22 **Section 2.** Section 10-3-1216, MCA, is amended to read:

23 **"10-3-1216. Cost recovery and civil remedies.** (1) Cost recovery is the duty of the city or county having  
24 authority where an incident occurred.

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

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

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

30 (5) Any person who receives compensation for the emergency response costs pursuant to any other

1 federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

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

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

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

14 ~~(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost~~  
15 ~~associated with an incident and the cost of collection described in this section, the state shall recover from the~~  
16 ~~city or county having authority where the incident occurred an amount equal to 25% of the total cost identified~~  
17 ~~pursuant to this part.~~

18 ~~—— (b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible~~  
19 ~~amount must be equally divided among the jurisdictions."~~

20 - END -