

CHAPTER 147

GOVERNMENT - LOCAL

HOUSE BILL 99-1056

BY REPRESENTATIVES Berry, Dean, Zimmerman, Alexander, Gagliardi, Gotlieb, Hoppe, Larson, Lawrence, Miller, Scott, Spence, Spradley, Tapia, and Young;
also SENATORS Phillips, Anderson, Arnold, Martinez, Owen, Pascoe, Rupert, and Tebedo.

AN ACT

CONCERNING THE EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE INCIDENTS, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 29-22-102, Colorado Revised Statutes, is amended to read:

29-22-102. Hazardous substance incidents - response authorities - designation. (1) It is the purpose of this section to provide for the designation of emergency response authorities for hazardous substance incidents. ~~Except as provided in subsection (2) of this section,~~ Every emergency response authority designated in or pursuant to this section shall be responsible for ~~the~~ PROVIDING AND MAINTAINING THE CAPABILITY FOR emergency response to a hazardous substance incident occurring within its jurisdiction. ~~and for the emergency response to a hazardous substance incident which initially occurs within its jurisdiction but which spreads to another jurisdiction. If a hazardous substance incident occurs on a boundary between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first emergency response authority to arrive at the scene of the incident shall be responsible for the emergency response; except that, subsequent to the emergency response, continuing responsibility shall be exercised by the emergency response authority in which the incident actually occurred.~~ AN EMERGENCY RESPONSE AUTHORITY MAY PROVIDE AND MAINTAIN THE CAPABILITY FOR SUCH RESPONSE DIRECTLY OR THROUGH MUTUAL AID OR OTHER AGREEMENTS. SUBJECT TO THE PROVISIONS OF LOCAL OR REGIONAL RESPONSE AGREEMENTS FOR HAZARDOUS SUBSTANCE INCIDENTS, THE FIRST EMERGENCY RESPONSE AUTHORITY, OR ITS PUBLIC AGENCY DESIGNEE THROUGH MUTUAL AID OR OTHERWISE, TO ARRIVE AT THE SCENE OF THE INCIDENT, REGARDLESS OF WHETHER THE INCIDENT OCCURS WITHIN ITS JURISDICTION, SHALL BE RESPONSIBLE FOR THE EMERGENCY RESPONSE AS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INCIDENT COMMANDER UNTIL SUCH TIME AS THE EMERGENCY RESPONSE AUTHORITY THAT HAS JURISDICTION OVER THE INCIDENT SITE HAS ARRIVED, AFTER WHICH UNIFIED COMMAND SHALL BE FOLLOWED UNTIL THE EMERGENCY RESPONSE HAS CONCLUDED. As used in this section, "emergency response to a hazardous substance incident" means taking the initial emergency action necessary to minimize the effects of a hazardous substance incident.

(2) If a hazardous substance incident occurs on private property ~~the owner or operator thereof may undertake the emergency response to such hazardous substance incident and shall notify and coordinate such~~ AND IS OTHERWISE REPORTABLE TO ANY FEDERAL, STATE, OR LOCAL AGENCY, THE OWNER OF THE PROPERTY OR PERSON OR ENTITY OPERATING ON THE PROPERTY SHALL PROMPTLY REPORT THE INCIDENT TO AND COORDINATE A response with the appropriate emergency response authority designated in or pursuant to this section. If the owner or operator does not undertake ~~such~~ OR COORDINATE AN emergency response or if, in the judgment of the designated emergency response authority there exists an imminent danger to the public health and safety beyond such property, the designated emergency response authority ~~shall be responsible for~~ MAY UNDERTAKE the emergency response to such hazardous substance incident, as provided in this section. NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO PROHIBIT THE OWNER OF PRIVATE PROPERTY OR A PERSON OR ENTITY OPERATING ON SUCH PROPERTY FROM UNDERTAKING THE EMERGENCY RESPONSE TO A HAZARDOUS SUBSTANCE INCIDENT OCCURRING ON THE PROPERTY.

(3) (a) The governing body of every town, city, and city and county shall designate by ordinance or resolution an emergency response authority OR AUTHORITIES for hazardous substance incidents occurring within the corporate limits of such town, city, and city and county. UNLESS OTHERWISE DESIGNATED BY ORDINANCE OR RESOLUTION, THE FIRE AUTHORITY HAVING RESPONSIBILITY FOR THE CORPORATE LIMITS OF SUCH TOWN, CITY, OR CITY AND COUNTY SHALL BE THE DESIGNATED EMERGENCY RESPONSE AUTHORITY.

(b) The board of county commissioners of every county in the state shall designate by ORDINANCE OR resolution the emergency response authority OR AUTHORITIES for hazardous substance incidents occurring within the unincorporated area of the county. UNLESS OTHERWISE DESIGNATED BY ORDINANCE OR RESOLUTION, THE COUNTY SHERIFF HAVING RESPONSIBILITY FOR THE UNINCORPORATED AREA OF THE COUNTY SHALL BE THE DESIGNATED EMERGENCY RESPONSE AUTHORITY.

(c) ~~If a hazardous substance incident occurs on any federal, state, or county highway located outside of municipal city limits, the Colorado state patrol shall be the emergency response authority for such hazardous substance incident for the purposes of this section. The Colorado state patrol may delegate such authority to the emergency response authority designated pursuant to paragraph (b) of this subsection (3) with the approval of the board of county commissioners.~~

(4) ~~Each governing body identified in paragraphs (a) and (b) of subsection (3) of this section and the Colorado state patrol shall, as necessary, exercise continuing supervisory authority for the cleanup and removal of the hazardous substance involved in an incident.~~

(5) (a) FOR THE PURPOSES OF THIS SECTION, IF A HAZARDOUS SUBSTANCE INCIDENT

OCCURS ON ANY FEDERAL, STATE, OR COUNTY HIGHWAY LOCATED OUTSIDE OF MUNICIPAL CITY LIMITS, THE COLORADO STATE PATROL SHALL BE THE EMERGENCY RESPONSE AUTHORITY FOR SUCH HAZARDOUS SUBSTANCE INCIDENT.

(b) THE COLORADO STATE PATROL MAY DELEGATE SUCH AUTHORITY TO THE EMERGENCY RESPONSE AUTHORITY DESIGNATED PURSUANT TO SUBSECTION (3) OF THIS SECTION OR TO ANY PUBLIC ENTITY CAPABLE OF PERFORMING THE EMERGENCY RESPONSE TO A HAZARDOUS SUBSTANCE INCIDENT UPON APPROVAL OF THE GOVERNING BODY OF THE ENTITY RECEIVING AUTHORITY UNDER SUCH DELEGATION.

(c) IN PERFORMING ITS DUTIES UNDER THIS SUBSECTION (5), THE COLORADO STATE PATROL SHALL, WHEN PRACTICABLE, LOCATE ITS EMERGENCY RESPONSE RESOURCES BASED UPON ITS ASSESSMENT OF THE HAZARDOUS SUBSTANCES EMERGENCY RESPONSE NEEDS OF THE DIFFERENT GEOGRAPHIC AREAS OF THE STATE.

(d) THE COLORADO STATE PATROL SHALL ACTIVELY COORDINATE ITS EMERGENCY RESPONSE CAPABILITIES AND PLANS WITH LOCAL EMERGENCY RESPONSE AGENCIES.

(6) EACH GOVERNING BODY IDENTIFIED IN SUBSECTION (3) OF THIS SECTION AND THE COLORADO STATE PATROL SHALL, AS NECESSARY, EXERCISE CONTINUING SUPERVISORY AUTHORITY IN CONSULTATION WITH OTHER FEDERAL, STATE, AND LOCAL AGENCIES HAVING REGULATORY JURISDICTION FOR THE CLEANUP AND REMOVAL OF THE HAZARDOUS SUBSTANCE INVOLVED IN AN INCIDENT.

SECTION 2. 29-22-103 (1), (2) (b), and (3), Colorado Revised Statutes, are amended to read:

29-22-103. Emergency response authority may request assistance. (1) Any emergency response authority ~~which~~ THAT, in its judgment, does not have the equipment, personnel, or expertise necessary to handle a particular hazardous substance incident ~~for which it is responsible under section 29-22-102 may request the nearest available fire department or other public agency~~ MAY MAKE A REQUEST TO ANY PUBLIC AGENCY OR PRIVATE ENTITY possessing such necessary equipment, personnel, or expertise to provide assistance to such emergency response authority.

(2) (b) The department of ~~health~~ PUBLIC SAFETY is hereby authorized to organize, ~~by~~ THROUGH mutual aid ~~agreement~~ OR OTHER AGREEMENTS, a state emergency response team AND REGIONAL EMERGENCY RESPONSE TEAMS. ~~Such~~ THE STATE team may consist of any federal, state, ~~and~~ local, OR PRIVATE entities ~~which~~ THAT have the appropriately trained personnel and the necessary equipment to respond on a statewide basis to a hazardous substance incident. THE REGIONAL TEAMS MAY CONSIST OF ANY FEDERAL, STATE, LOCAL, OR PRIVATE ENTITIES THAT HAVE THE APPROPRIATELY TRAINED PERSONNEL AND THE NECESSARY EQUIPMENT TO RESPOND ON A REGIONAL BASIS TO A HAZARDOUS SUBSTANCE INCIDENT AND TO ASSIST THE STATE TEAM IN RESPONDING ON A STATEWIDE BASIS TO A HAZARDOUS SUBSTANCE INCIDENT. ~~The team~~ STATE AND REGIONAL TEAMS shall be available to respond to hazardous substance incidents upon request made to the department of ~~health~~ PUBLIC SAFETY by an emergency response authority. The emergency response authority ~~which~~ THAT requests a response by the state emergency response team, A REGIONAL EMERGENCY RESPONSE TEAM, OR BOTH shall assure that the reasonable and documented costs of the team's OR TEAMS' response are included in any

reimbursement for costs sought in accordance with this article. The ~~department of health~~ EMERGENCY RESPONSE AUTHORITY shall distribute any such reimbursement ~~which~~ THAT is made to it on a pro rata basis to each entity ~~which~~ THAT made up the state emergency response team ~~which~~ OR TEAMS THAT responded to a hazardous substance incident.

~~(3) Mutual aid agreements are encouraged between emergency response authorities, the department of health, and counties for the purpose of utilizing equipment and expertise in order to safely handle hazardous substance incidents. ANY MUNICIPAL OR COUNTY GOVERNING BODY, ANY EMERGENCY RESPONSE AUTHORITY, ANY PRIVATE ENTITY, THE COLORADO STATE PATROL, OR THE DEPARTMENT OF PUBLIC SAFETY MAY ENTER INTO MUTUAL AID OR OTHER AGREEMENTS FOR THE PURPOSE OF ENHANCING THE RESPONSE TO HAZARDOUS SUBSTANCE INCIDENTS. SUCH AGREEMENTS MAY INCLUDE, BUT ARE NOT LIMITED TO, PROCEDURES FOR UTILIZING EQUIPMENT, PERSONNEL, AND TECHNICAL ASSISTANCE.~~

SECTION 3. 29-22-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

29-22-104. Right to claim reimbursement - temporary committee on reimbursement. (5) (a) (I) NO LATER THAN JUNE 15, 1999, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY SHALL APPOINT A TEMPORARY COMMITTEE ON REIMBURSEMENT FOR THE COSTS OF HAZARDOUS SUBSTANCE INCIDENTS. THE EXECUTIVE DIRECTOR SHALL APPOINT AS COMMITTEE MEMBERS REPRESENTATIVES OF FACILITIES AND TRANSPORTATION COMPANIES THAT PRODUCE OR HANDLE HAZARDOUS SUBSTANCES, INSURANCE COMPANIES, FIRE DEPARTMENTS AND OTHER HAZARDOUS SUBSTANCE INCIDENT RESPONSE AGENCIES, MUNICIPAL AND COUNTY GOVERNMENTS, THE COLORADO STATE PATROL, THE DIVISION OF FIRE SAFETY, AND SUCH OTHER ENTITIES AS THE DIRECTOR DEEMS NECESSARY AND APPROPRIATE. THE DIRECTOR SHALL APPOINT EQUAL NUMBERS OF REPRESENTATIVES OF PRIVATE AND PUBLIC ENTITIES TO THE COMMITTEE.

(II) THE COMMITTEE SHALL HOLD ITS FIRST MEETING NO LATER THAN JULY 1, 1999, AND SHALL ELECT A CHAIRPERSON AT THE FIRST MEETING. SUBSEQUENTLY, THE COMMITTEE SHALL MEET AT LEAST ONCE EACH MONTH UNTIL IT HAS MADE THE WRITTEN RECOMMENDATIONS REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (5) AND MAY MEET AS OFTEN AS THE CHAIRPERSON DEEMS NECESSARY. MEMBERS OF THE COMMITTEE SHALL NOT RECEIVE COMPENSATION OF ANY KIND.

(b) (I) NO LATER THAN AUGUST 15, 1999, THE TEMPORARY COMMITTEE ON REIMBURSEMENT FOR THE COSTS OF HAZARDOUS SUBSTANCE INCIDENTS SHALL MAKE WRITTEN RECOMMENDATIONS TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY REGARDING GUIDELINES FOR ADMINISTERING AND RESOLVING CLAIMS FOR REIMBURSEMENT MADE PURSUANT TO THIS SECTION AGAINST ANY PARTY OR PERSON RESPONSIBLE FOR A HAZARDOUS SUBSTANCE INCIDENT. SUCH RECOMMENDATIONS MAY INCLUDE RECOMMENDATIONS FOR PROPOSED LEGISLATION OR ADMINISTRATIVE RULES AND SHALL INCLUDE RECOMMENDATIONS FOR AN ADMINISTRATIVE PROCESS TO ENSURE PROMPT MEDIATION OF DISPUTES CONCERNING CLAIMS FOR REIMBURSEMENT MADE PURSUANT TO THIS SECTION BY ANY PUBLIC ENTITY AGAINST ANY PERSON OR PARTY RESPONSIBLE FOR A HAZARDOUS SUBSTANCE

INCIDENT. SUCH RECOMMENDATIONS SHALL BE DESIGNED TO PROVIDE PUBLIC ENTITIES AND PERSONS OR PARTIES RESPONSIBLE FOR HAZARDOUS SUBSTANCE INCIDENTS WITH THE OPPORTUNITY TO RESOLVE CLAIMS FOR REIMBURSEMENT THAT RESULT FROM HAZARDOUS SUBSTANCE INCIDENTS IN A TIMELY AND REASONABLE MANNER.

(II) NO RECOMMENDATION MADE BY THE TEMPORARY COMMITTEE ON REIMBURSEMENT FOR THE COSTS OF HAZARDOUS SUBSTANCE INCIDENTS SHALL BE IMPLEMENTED OR HAVE THE FORCE AND EFFECT OF LAW OR RULE, OR BE CONSIDERED BY ANY COURT OR ARBITER UNLESS SUCH RECOMMENDATION IS ENACTED INTO LAW OR ADOPTED BY ADMINISTRATIVE RULE IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(c) NO LATER THAN SEPTEMBER 1, 1999, UNLESS THE LEGISLATIVE AUDIT COMMITTEE SPECIFIES A LATER DATE, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY SHALL REPORT THE RECOMMENDATIONS OF THE TEMPORARY COMMITTEE ON REIMBURSEMENT FOR THE COSTS OF HAZARDOUS SUBSTANCE INCIDENTS TO THE LEGISLATIVE AUDIT COMMITTEE. THE REPORT SHALL INCLUDE ANY PROPOSED LEGISLATION RECOMMENDED TO THE EXECUTIVE DIRECTOR BY THE TEMPORARY COMMITTEE.

SECTION 4. 24-33.5-1203 (1) (i) and (1) (k), Colorado Revised Statutes, are amended to read:

24-33.5-1203. Duties of the division. (1) The division shall perform the following duties:

(i) Coordinate fire service education and training programs, HAZARDOUS MATERIALS RESPONDER TRAINING PROGRAMS, and firefighter and first responder certification programs, which shall be available statewide;

(k) Train and instruct firefighters and first responders in subjects relating to the fire service and to coordinate fire service-related education and training classes, programs, conferences, and seminars, AND TRAIN AND INSTRUCT, OR COORDINATE THE TRAINING OF, HAZARDOUS MATERIALS RESPONDERS;

SECTION 5. 25-1-107 (1) (y), Colorado Revised Statutes, is amended to read:

25-1-107. Powers and duties of the department - repeal. (1) The department has, in addition to all other powers and duties imposed upon it by law, the following powers and duties:

(y) To compile and maintain current information necessary to enable the department to answer any inquiry concerning the proper action to take to counteract, eliminate, or minimize the public health hazards of a hazardous substance incident involving any specific kind of hazardous substance. ~~and to compile and maintain information on the emergency response capabilities of public and private agencies throughout the state to enable the department to answer any inquiry concerning the nearest agencies available to contribute equipment and personnel to counteract any particular hazardous substance incident, and to compile and maintain information on the proper local, state, and federal entities which should receive information or~~

~~notification of any hazardous substance incident.~~ TO MAKE SUCH INFORMATION AVAILABLE AND TO FACILITATE THE REPORTING OF HAZARDOUS SUBSTANCE INCIDENTS, the department shall establish, MAINTAIN, and publicize a AN ENVIRONMENTAL EMERGENCY telephone service ~~to make such information~~ THAT SHALL BE available to the public twenty-four hours each day. ~~and shall specifically notify each emergency response authority designated in or pursuant to section 29-22-102, C.R.S., as responsible for the emergency response to a hazardous substance incident of such service.~~ With respect to the powers and duties specified in this paragraph (y), the department shall have no rule-making authority and shall avail itself of all available private resources. As used in this paragraph (y), the terms "hazardous substance" and "hazardous substance incident" shall have the meanings ascribed to them in section 29-22-101, C.R.S. THE DEPARTMENT SHALL COORDINATE ITS ACTIVITIES PURSUANT TO THIS SECTION WITH THE COLORADO STATE PATROL.

SECTION 6. Article 22 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

29-22-110. Colorado state patrol to provide information. THE COLORADO STATE PATROL SHALL COMPILE AND MAINTAIN INFORMATION ON THE EMERGENCY RESPONSE CAPABILITIES OF PUBLIC AND PRIVATE AGENCIES THROUGHOUT THE STATE TO ENABLE THE STATE PATROL TO ANSWER ANY INQUIRY CONCERNING THE NEAREST AGENCIES OR ENTITIES AVAILABLE TO CONTRIBUTE EQUIPMENT AND PERSONNEL TO AID IN THE EMERGENCY RESPONSE TO ANY HAZARDOUS SUBSTANCE INCIDENT. THE STATE PATROL SHALL ALSO COMPILE AND MAINTAIN INFORMATION REGARDING WHICH LOCAL, STATE, OR FEDERAL AGENCIES OR ENTITIES SHOULD BE NOTIFIED OF ANY HAZARDOUS SUBSTANCE INCIDENT. THE STATE PATROL SHALL ESTABLISH, MAINTAIN, AND PUBLICIZE A TELEPHONE SERVICE TO MAKE SUCH INFORMATION AVAILABLE TO THE PUBLIC TWENTY-FOUR HOURS EACH DAY AND SHALL NOTIFY EACH EMERGENCY RESPONSE AUTHORITY DESIGNATED IN OR PURSUANT TO SECTION 29-22-102 AS RESPONSIBLE FOR THE EMERGENCY RESPONSE TO A HAZARDOUS SUBSTANCE INCIDENT OF SUCH SERVICE. WITH RESPECT TO THE POWERS AND DUTIES SPECIFIED IN THIS SECTION, THE STATE PATROL SHALL HAVE NO RULE-MAKING AUTHORITY AND SHALL AVAIL ITSELF OF ALL AVAILABLE PRIVATE RESOURCES. THE STATE PATROL SHALL COORDINATE ITS ACTIVITIES PURSUANT TO THIS SECTION WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND THE DEPARTMENT OF LOCAL AFFAIRS.

SECTION 7. Repeal. 24-1-128.6 (2) (g), Colorado Revised Statutes, is repealed as follows:

24-1-128.6. Department of public safety - creation. (2) The department of public safety shall consist of the following divisions:

(g) ~~The Colorado safety institute, the head of which shall be the director of the Colorado safety institute. The Colorado safety institute and the office of the director thereof, created by part 13 of article 33.5 of this title, shall exercise their powers and perform their duties and functions as if the same were transferred by a type 2 transfer to the department of public safety.~~

SECTION 8. Repeal. 24-33.5-103 (2) (g), Colorado Revised Statutes, is repealed as follows:

24-33.5-103. Department created - divisions. (2) The department shall consist of the following divisions:

(g) ~~Colorado safety institute.~~

SECTION 9. Repeal. Part 13 of article 33.5 of title 24, Colorado Revised Statutes, is repealed.

SECTION 10. Appropriation - adjustments to the 1999 long bill - no appropriation. (1) For the implementation of this act, except for section 29-22-104(5), Colorado Revised Statutes, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 1999, shall be adjusted as follows:

(a) The appropriation to the department of public health and environment, hazardous waste control program, for program costs, is decreased by fifty thousand nine hundred sixty-five dollars (\$50,965) from the Hazardous Waste Service Fund and 1.0 FTE.

(b) The appropriation to the department of public safety, Colorado state patrol, is increased by forty-four thousand six hundred sixty dollars (\$44,660) from the Highway Users Tax Fund and 1.0 FTE.

(2) The general assembly has determined that section 29-22-104 (5), Colorado Revised Statutes, can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of section 29-22-104 (5), Colorado Revised Statutes.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1999