

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 86*

Short Title: Hazardous Materials Emergency Response.

(Public)

Sponsors: Representatives Hightower; Smith, Flaherty, and Wright.

Referred to: State Government.

February 9, 1993

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REGIONAL RESPONSE TEAMS FOR HAZARDOUS MATERIALS EMERGENCIES IN NORTH CAROLINA.

Whereas, since 1989 over 1,800 chemical incidents have been reported annually from across the State to the Department of Crime Control and Public Safety, Division of Emergency Management; and

Whereas, these incidents involve both transportation accidents and mishaps at facilities using or storing hazardous materials; and

Whereas, North Carolina has more than 95,144 functional miles of highway over which hazardous materials are transported and more than 6,486 facilities that are required to file reports on quantities of hazardous or extremely hazardous materials present at their facilities pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended; and

Whereas, in 1989, the Occupational Safety and Health Administration issued its regulations at 29 Code of Federal Regulations § 1910.120 governing hazardous materials emergency response; and

Whereas, these regulations require minimum thresholds of training and equipment for persons responding to hazardous incidents, that, although very expensive to implement, protect not only the health and safety of those responding to hazardous materials emergencies, but also the public's health and safety. Rapid and appropriate response to hazardous materials incidents saves lives and money and protects the environment; and

1 (a) The Secretary shall adopt rules establishing a regional response program for
2 hazardous materials emergencies, to be administered by the Division of Emergency
3 Management. To the extent possible, the regional response program shall be
4 coordinated with other emergency planning activities of the State. The regional
5 response program shall include at least six hazmat teams located strategically across the
6 State that are available to provide regional response to hazardous materials incidents
7 requiring technician-level entry capability and 24-hour dispatch and communications
8 capability at the Division of Emergency Management Operations Center. The rules for
9 the program shall include:

- 10 (1) Standards, including training, equipment, and personnel standards
11 required to operate a regional response team with technician-level
12 entry capability.
- 13 (2) Guidelines for the dispatch of a regional response team to a hazardous
14 materials incident.
- 15 (3) Guidelines for the on-site operations of a regional response team.
- 16 (4) Standards for administration of a regional response team, including
17 procedures for reimbursement of response costs.
- 18 (5) Refresher and specialist training for members of regional response
19 teams.
- 20 (6) Procedures for recovering the costs of a response to a hazardous
21 materials incident from persons determined to be responsible for the
22 emergency.
- 23 (7) Procedures for bidding and contracting for the provision of a hazmat
24 team for the regional response program.
- 25 (8) Criteria for evaluating bids for the provision of a hazmat team for
26 regional response.
- 27 (9) Delineation of the roles of the regional response team, local fire
28 department and local public safety personnel, the Division of
29 Emergency Management's area coordinator, and other State agency
30 personnel responding to the scene of a hazardous materials incident.

31 (b) In developing the program and adopting rules, the Secretary shall consult
32 with the Regional Response Team Advisory Committee established pursuant to G.S.
33 166A-24.

34 **"§ 166A-20. Contracts, equipment loans.**

35 (a) The Secretary may contract with any unit or units of local government for the
36 provision of a regional response team to implement the regional response program.
37 Contracts are to be let consistent with the bidding and contract standards and procedures
38 adopted pursuant to G.S. 166A-19(a)(7) and (8). In entering into contracts with units of
39 local government, the Secretary may agree to provide:

- 40 (1) A loan of equipment, including a hazmat vehicle, necessary for the
41 provision technician-level entry capability;
- 42 (2) Reimbursement of personnel costs when a regional response team is
43 authorized by the Department to respond to a hazmat incident,
44 including the cost of call-back personnel;

- 1 (3) Reimbursement for use of equipment and vehicles owned by the
- 2 regional response team;
- 3 (4) Replacement of disposable materials and damaged equipment;
- 4 (5) Costs of medical surveillance for members of the regional response
- 5 team, including baseline, maintenance, and exit physicals;
- 6 (6) Training expenses; and
- 7 (7) Other provisions agreed to by the Secretary and the regional response
- 8 team.

9 (b) The Secretary shall not agree to provide reimbursement for:

- 10 (1) Costs of clean-up activities, after a spill or leak has been contained;
- 11 (2) Local response not requiring technician-level entry capability; or
- 12 (3) Standby time.

13 (c) Any contract entered into between the Secretary and a unit of local

14 government for the provision of a regional response team shall specify that the members

15 of the regional response team, when performing their duties under the contract, shall not

16 be employees of the State and shall not be entitled to benefits under the Retirement

17 System for Teachers and State Employees, benefits for the payment of federal social

18 security, employment insurance, or workers' compensation.

19 (c) Regional response teams that have the use of a State hazmat vehicle may use

20 the vehicle for local purposes. Where a State vehicle is used for purposes other than

21 authorized regional response to a hazardous materials incident, the regional response

22 team shall be liable for repairs or replacements directly attributable to the nonauthorized

23 response.

24 **"§ 166A-21. Immunity of regional response team personnel.**

25 Members of a regional response team shall be protected from liability under the

26 provisions of G.S. 166A-14(a) while responding to a hazardous materials incident

27 pursuant to authorization from the Division of Emergency Management.

28 **"§ 166A-22. Right of entry.**

29 A regional response team, when authorized to respond to a release or threatened

30 release of hazardous materials, may enter onto any private or public property on which

31 the release has occurred or on which there is an imminent threat of such release. A

32 regional response team may also enter, under such circumstances, any adjacent or

33 surrounding property in order to respond to the release or threatened release of

34 hazardous material or to monitor, control, and contain the release or perform any other

35 action in mitigation of a hazardous materials incident.

36 **"§ 166A-23. Regional response team advisory committee.**

37 (a) The Regional Response Team Advisory Committee is created. The Secretary

38 shall appoint the members of the Committee and shall designate the chair. In making

39 appointments, the Secretary shall take into consideration the expertise of the appointees

40 in the management of hazardous materials emergencies. The Secretary shall appoint

41 one representative from:

- 42 (1) The Division of Emergency Management;
- 43 (2) The North Carolina Highway Patrol;
- 44 (3) The Fire and Rescue Commission;

- 1 (4) The Department of Environment, Health, and Natural Resources;
- 2 (5) The Department of Transportation;
- 3 (6) The Department of Agriculture;
- 4 (7) The Chemical Industry Council of North Carolina;
- 5 (8) The N.C. Association of Hazardous Materials Responders;
- 6 (9) Each regional response team.

7 In addition to the persons listed above, the Secretary shall appoint to the Advisory
8 Committee three persons designated jointly by the North Carolina Fire Chiefs
9 Association and the North Carolina Firemen's Association.

10 (b) The Advisory Committee shall meet on the call of the chair, or at the request
11 of the Secretary; provided that the Committee shall meet no less than once every three
12 months. The Department of Crime Control and Public Safety shall provide space for
13 the Advisory Committee to meet. The Department also shall provide the Advisory
14 Committee with necessary support staff and supplies to enable the Committee to carry
15 out its duties in an effective manner.

16 (c) Members of the Advisory Committee shall serve without pay, but shall
17 receive travel allowance, lodging, subsistence, and per diem as provided by G.S. 138-5.

18 (d) The Regional Response Team Advisory Committee shall advise the Secretary
19 on the establishment of the program for regional response to hazardous materials
20 emergencies in the State. The Committee shall also evaluate and advise the Secretary of
21 the need for additional regional response teams to serve the State.

22 **"§ 166A-24. Action for the recovery of costs of hazardous materials emergency**
23 **response.**

24 A person who causes the release of a hazardous material requiring the activation of a
25 regional response team shall be liable for all costs incurred by the regional response
26 team in responding to and mitigating the incident. The Secretary shall invoice the
27 person liable for the hazardous materials release, and, in the event of nonpayment, may
28 institute an action to recover those costs in the superior court division of the county in
29 which the release occurred.

30 **"§ 166A-25. Hazardous Materials Emergency Response Fund.**

31 There is established in the Department of Crime Control and Public Safety a
32 nonreverting fund for those monies collected pursuant to G.S.166A-25. The Fund is also
33 authorized to accept any gift, grant, or donation of money or property to facilitate the
34 establishment and operation of the regional response system."

35 Sec. 3. There is appropriated from the General Fund to the Department of
36 Crime Control and Public Safety the sum of two million, six hundred thirty-nine
37 thousand eight hundred eighteen dollars (\$2,639,818) for the 1993-94 fiscal year, and
38 the sum of nine hundred forty-eight thousand, three hundred forty-three dollars
39 (\$948,343) for the 1994-95 fiscal year to be distributed as follows:

- 40 (1) Two million five hundred twenty-one thousand four hundred dollars
41 (\$2,521,400) in the 1993-94 fiscal year to establish, equip, and train a
42 minimum of six hazmat teams to provide regionalized response to
43 hazardous materials emergencies across the State. This amount shall
44 be reduced by the amount of any grants, gifts, or donations received by

- 1 the Hazardous Materials Emergency Response Fund during the 1993-
2 94 fiscal year.
- 3 (2) Seven hundred forty-one thousand four hundred dollars (\$741,400) in
4 the 1994-95 fiscal year, to cover the ongoing operational costs of the
5 regional response teams, including replacement equipment and
6 training.
- 7 (3) One hundred eighteen thousand four hundred eighteen dollars
8 (\$118,418) in the 1993-94 fiscal year, and two hundred six thousand
9 nine hundred forty-three dollars (\$206,943) in the 1994-95 fiscal year,
10 for additional personnel to provide 24-hour coverage at the Division of
11 Emergency Management Operations Center in Raleigh and for an
12 industrial hygienist.
- 13 Sec. 4. This act becomes effective July 1, 1993.