
SUBSTITUTE HOUSE BILL 1039

State of Washington

61st Legislature

2009 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives Driscoll, Ericks, Haler, Seaquist, Simpson, Conway, Hurst, Haigh, Goodman, O'Brien, Morrell, Kelley, Wood, Kenney, Hunt, and White)

READ FIRST TIME 02/11/09.

1 AN ACT Relating to establishing a statewide CBRNE response program;
2 amending RCW 43.43.938; adding a new chapter to Title 43 RCW; creating
3 new sections; and making an appropriation.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the threat of
6 an incident caused by a chemical, biological, radioactive, nuclear, or
7 explosive agent occurring in the state poses a severe threat to the
8 health, safety, and welfare of the citizens of the state of Washington.
9 In order to mitigate any damage that may be caused by CBRNE incidents,
10 it is necessary that the state have a coordinated and comprehensive
11 plan to respond to these dangerous and deadly incidents.

12 (2) The legislature further finds that the current system of
13 relying almost exclusively on local jurisdictions to respond to CBRNE
14 incidents is inadequate because it stretches the capabilities of local
15 jurisdictions, it lacks uniformity in training, equipment, and response
16 standards, and it hinders the ability of jurisdictions to cooperate in
17 the event of a catastrophic incident. Major portions of the state lack
18 protection from CBRNE incidents because many local jurisdictions simply
19 do not have the capabilities to respond to these incidents.

1 (3) The legislature further finds that an active response
2 capability will mitigate the need for large scale environmental cleanup
3 efforts. Additionally, the legislature recognizes that future
4 appropriations and grant proceeds are often predicated upon the current
5 success of a program. Accordingly, the legislature intends to begin
6 the implementation of a statewide CBRNE response program by funding the
7 program in two phases.

8 NEW SECTION. **Sec. 2.** The director shall establish and maintain a
9 statewide CBRNE response program. However, the overall statewide CBRNE
10 response program described and organized pursuant to sections 3 through
11 14 of this act shall be developed in two phases as follows:

12 (1) Phase one shall consist of the following:

13 (a) The state treasurer shall transfer funds as may be necessary
14 from the local toxics control account to the statewide CBRNE response
15 account, established in section 11 of this act, for the CBRNE program
16 design and development phase during the 2009-2011 biennium.

17 (b) The director shall:

18 (i) Provide for appropriate staff and administrative support
19 necessary to design a statewide CBRNE program to fully develop its
20 infrastructure.

21 (ii) Create and adopt any rules, procedures, policies, or standards
22 that are necessary to implement and administer the provisions of this
23 chapter.

24 (iii) Create a policy advisory group and an operations advisory
25 group to assist in the design and development of the program as
26 specified under section 7 of this act.

27 (iv) Identify the specific start-up costs to train and equip each
28 CBRNE regional response team to meet a type one state defined standard.

29 (v) Analyze in detail the costs to operate and sustain a fully
30 implemented CBRNE program, as described in phase two, and as designed
31 during phase one of the program.

32 (vi) Develop and sign an interlocal agreement with each CBRNE
33 regional response team as specified under section 6 of this act.

34 (vii) Develop a cost recovery program as specified under section
35 12 of this act.

36 (viii) Seek and acquire supplementary grants from public and

1 private sources, in addition to identified sources, to help fund the
2 operation and administration of the program as specified under section
3 13 of this act.

4 (2) Phase two shall consist of the following:

5 (a) The state treasurer shall transfer such funds as may be
6 necessary from the local toxics control account, or from another
7 source or sources identified during phase one, to the statewide CBRNE
8 response account for the full implementation and operation of the
9 statewide CBRNE program.

10 (b) The director shall:

11 (i) Implement and administer a fully operational statewide CBRNE
12 response program as provided for under this act and as designed during
13 phase one.

14 (ii) Procure the equipment and logistical support necessary to
15 achieve and sustain a type one capability for each CBRNE response team
16 as defined during phase.

17 (iii) Implement an appropriate training and exercise program that
18 achieves and sustains the standards defined during phase one.

19 (iv) Implement an aggressive cost recovery program as specified
20 under section 12 of this act.

21 (v) Monitor mission effectiveness and program efficiency by
22 carefully measuring team performance against established standards; by
23 evaluating team capabilities through annual exercises; by measuring
24 team readiness through periodic inspections; and by evaluating program
25 administration through periodic audits.

26 NEW SECTION. **Sec. 3.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires otherwise.

28 (1) "CBRNE agent" means a chemical, biological, radioactive,
29 nuclear, or explosive agent.

30 (2) "CBRNE incident" means an incident creating a danger or the
31 possibility of a danger to persons, property, or the environment as a
32 result of spillage, seepage, fire, explosion, or release of a CBRNE
33 agent.

34 (3) "Director" means the director of fire protection in the
35 Washington state patrol.

1 NEW SECTION. **Sec. 4.** (1) The overall statewide CBRNE response
2 program must include:

3 (a) The division of the state into five CBRNE response regions;

4 (b) A network of two regional CBRNE teams, one hazmat and one bomb,
5 to respond to CBRNE incidents within their respective regions and to
6 operate outside their respective regions to assist other regional teams
7 when needed;

8 (c) Standards for training, equipment, and operational procedures
9 for regional teams and other responders concerning responses to CBRNE
10 incidents;

11 (d) Procedures for reimbursing regional teams for costs as a result
12 of approved responses; and

13 (e) Procedures for recovering response costs from parties
14 responsible for causing a CBRNE incident.

15 (2) The director shall adopt any rules necessary to implement and
16 administer the provisions of this chapter.

17 (3) The requirement of the program under this chapter is subject to
18 appropriation by the legislature.

19 NEW SECTION. **Sec. 5.** (1) The director shall divide the state into
20 five CBRNE response regions. In making this division, the director
21 must consider: (a) The history of any CBRNE or hazardous materials
22 incident locations throughout the state and the factors that contribute
23 to those incidents; (b) the current geographical distribution of CBRNE
24 or hazardous materials responders; and (c) any existing regional
25 divisions in the state.

26 (2) After consultation with the policy and operations advisory
27 groups established under section 7 of this act, the director may, with
28 good cause, modify boundaries of the established regions.

29 NEW SECTION. **Sec. 6.** (1) After consultation with the policy and
30 operations advisory groups established under section 7 of this act, the
31 director shall determine the number of technicians and the level of
32 training required of the response teams for that region. These
33 determinations must be made based upon the risk that each region faces
34 from a CBRNE incident.

35 (2) The director shall contract with two regional response teams
36 from each of the five regions. The director may contract only with a

1 unit of local government with respect to a regional response team.
2 Units of local government that are located in the same region may enter
3 into intergovernmental agreements for the formation of a regional
4 response team.

5 NEW SECTION. **Sec. 7.** (1) Two advisory groups are created to
6 assist the director in implementing and managing the program. The
7 policy advisory group will advise the director on budget, staffing,
8 policy, and other management-related issues. The operations advisory
9 group will advise the director on technical and operational issues,
10 including training, equipment, response, and performance standards.
11 Both advisory groups serve a strictly advisory role to the director in
12 all matters.

13 (2) The policy advisory group shall consist of six members
14 appointed by the director and shall include: (a) Two members nominated
15 by and representing the Washington association of sheriffs and police
16 chiefs; (b) two members nominated by and representing the Washington
17 state fire chiefs association; (c) one member nominated by and
18 representing the Washington state emergency management council; and (d)
19 one member representing the director's office.

20 (3) The operations advisory group shall consist of voting and
21 nonvoting members. Voting members shall include two members from each
22 CBRNE response region appointed by and representing the contracting
23 units of local government under section 6(2) of this act. Nonvoting
24 members shall include one appointed representative from each of the
25 following state agencies: Ecology, health, transportation, Washington
26 state patrol office of the state fire marshal, military, and the
27 emergency management division of the military department. In addition,
28 the director shall seek appointment of one tribal nation representative
29 and two private sector representatives.

30 (4) All members serve at the discretion of the appointing
31 authority.

32 (5) Members shall be reimbursed for travel expenses as provided in
33 RCW 43.03.050 and 43.03.060.

34 NEW SECTION. **Sec. 8.** (1) The primary duty of a regional response
35 team is to stabilize a CBRNE incident. Regional response teams are
36 limited to emergency responses and the evaluation and documentation

1 functions arising from CBRNE incidents that threaten life, property, or
2 the environment. A regional response team must respond to the best of
3 its ability, subject to the limitations of available equipment and
4 personnel. Regional response teams must work with known local hazard
5 industries, emergency response and management agencies, and local
6 emergency planning committees to ensure an appropriate integration of
7 plans, training, and operational response.

8 (2) A regional response team may sample, test, analyze, treat,
9 remove, recover, package, monitor, or track the involvement of a CBRNE
10 agent only if it is incidentally necessary to identify a CBRNE agent,
11 prevent the release or threat of a release of a CBRNE agent, or
12 stabilize a CBRNE incident.

13 (3) The activities of a regional response team are limited to those
14 that can be accomplished safely to stabilize a CBRNE incident and,
15 except as may be incidentally necessary, do not include the transport,
16 storage, disposal, or remedial cleanup of CBRNE agents.

17 (4) A regional response team is not required to maintain general
18 security or safety perimeters, locate underground utilities, ensure
19 appropriate traffic control services, conduct hydrological
20 investigations and analysis, or provide testing, removal, or disposal
21 of underground storage tank contamination at or near the CBRNE incident
22 to which the team is dispatched.

23 NEW SECTION. **Sec. 9.** The director must establish procedures for
24 the dispatch of a regional response team to a CBRNE incident. These
25 procedures must include standards for the evaluation of a CBRNE
26 incident by a state or local agency and, if the incident cannot be
27 controlled with local resources, a process for the state or local
28 agency to request the assistance of a regional response team.

29 NEW SECTION. **Sec. 10.** (1) If a unit of local government requests
30 the assistance of a regional response team under the dispatch
31 procedures set forth under section 9 of this act, then, upon the team's
32 arrival, the unit of local government must provide the team with site-
33 specific and geographical and topological information sufficient to
34 support the tactical decisions required by the situation.

35 (2) A unit of local government, upon request by the appropriate

1 regional response team, must provide any preplanning information that
2 the team reasonably requests. This information may include, without
3 limitation:

- 4 (a) Facility site-specific floor plans and occupancy information;
- 5 (b) Local maps; and
- 6 (c) An inventory of the types and levels of emergency operational
7 support and resources available locally.

8 (3) A unit of local government, upon request by the appropriate
9 regional response team, must provide any site security that the team
10 reasonably requests. This may include, without limitation: (a) Site
11 perimeter control; (b) force protection; and (c) site safety searches
12 or sweeps.

13 (4) A unit of local government, upon request by the appropriate
14 regional response team, must provide any logistical support that the
15 team reasonably requests. This support may include, without
16 limitation: (a) Food and water; (b) a source of water for fire
17 suppression and decontamination; (c) fuel and other supplies; (d)
18 shelter; and (e) interoperable communications.

19 (5) A unit of local government, upon request by the appropriate
20 regional response team, must provide a national incident management
21 system compliant incident command and control structure to ensure all
22 tactical decisions and operations are carried out in a safe and uniform
23 manner by all participating responders.

24 NEW SECTION. **Sec. 11.** (1) The statewide CBRNE response account is
25 created in the custody of the state treasurer.

26 (2) The account shall contain all of the following:

- 27 (a) All moneys recovered from cost reimbursements under section 12
28 of this act;
- 29 (b) All grant proceeds not otherwise required to be maintained in
30 a separate account;
- 31 (c) All moneys transferred under section 2 of this act; and
- 32 (d) Any other moneys appropriated or transferred to the account by
33 the legislature.

34 (3) Expenditures from the account may be used only as provided in
35 this act. Only the director or his or her designee may authorize
36 expenditures from the account. The account is subject to allotment

1 procedures under chapter 43.88 RCW, but an appropriation is not
2 required for expenditures.

3 NEW SECTION. **Sec. 12.** (1) If a specific person or entity is
4 responsible for the necessary expenses incurred by the director or a
5 CBRNE regional response team pertaining to its response to a CBRNE
6 incident, then the director shall notify the responsible party by
7 appropriate order. The director may not issue an order pertaining to
8 a project or activity that was completed more than five years prior to
9 the date of the proposed issuance of the order. The order must state
10 the findings of the director concerning liability, the amount of
11 necessary expenses incurred in conducting the response, and a notice
12 that the amount is due and payable immediately upon receipt of the
13 order.

14 (2) The director may, upon application from the recipient of an
15 order received within thirty days after the receipt of the order,
16 reduce or set aside, in its entirety, the amount due and payable if it
17 appears from the application, and from any further investigation the
18 director may desire to undertake, that a reduction or setting aside is
19 just and fair under all the circumstances.

20 (3) If the responsible party fails to pay the amount specified in
21 the order issued by the director or if an application has been made
22 within thirty days as provided in this section and the amount provided
23 in the order issued by the department subsequent to such application is
24 not paid within fifteen days after receipt thereof, the attorney
25 general, upon request of the director, shall bring an action on behalf
26 of the state in the superior court of Thurston county or any county in
27 which the person to which the order is directed does business, or in
28 any other court of competent jurisdiction, to recover the amount
29 specified in the final order of the director.

30 (4) No order issued under this section may be construed as an order
31 within the meaning of RCW 43.21B.310 and is not appealable to the
32 hearings board.

33 (5) All moneys recovered under this section must be deposited into
34 the statewide CBRNE response account established under section 11 of
35 this act.

36 (6) For the purposes of this section, "necessary expenses" means
37 the expenses incurred by the director and assisting state or local

1 agencies for (a) investigating the source of the incident; (b)
2 conducting actions to stabilize the CBRNE incident; and (c) enforcing
3 the provisions of this chapter and collecting for damages caused by a
4 CBRNE incident.

5 NEW SECTION. **Sec. 13.** (1) The director shall establish procedures
6 to actively seek grants from public or private sources for the
7 operation and administration of the statewide CBRNE response program.
8 The director shall work in cooperation with the state military
9 department and local jurisdictions to obtain grant funding for the
10 program.

11 (2) Grant proceeds must be deposited into the statewide CBRNE
12 response account, or if required as a condition of the grant into a
13 dedicated grant fund.

14 **Sec. 14.** RCW 43.43.938 and 1995 c 369 s 18 are each amended to
15 read as follows:

16 (1) Wherever the term state fire marshal appears in the Revised
17 Code of Washington or the Washington Administrative Code it shall mean
18 the director of fire protection.

19 (2) The chief of the Washington state patrol shall appoint an
20 officer who shall be known as the director of fire protection. The
21 board, after consulting with the chief of the Washington state patrol,
22 shall prescribe qualifications for the position of director of fire
23 protection. The board shall submit to the chief of the Washington
24 state patrol a list containing the names of three persons whom the
25 board believes meet its qualifications. If requested by the chief of
26 the Washington state patrol, the board shall submit one additional list
27 of three persons whom the board believes meet its qualifications. The
28 appointment shall be from one of the lists of persons submitted by the
29 board.

30 (3) The director of fire protection may designate one or more
31 deputies and may delegate to those deputies his or her duties and
32 authorities as deemed appropriate.

33 (4) The director of fire protection, in accordance with the
34 policies, objectives, and priorities of the fire protection policy
35 board, shall prepare a biennial budget pertaining to fire protection

1 services. Such biennial budget shall be submitted as part of the
2 Washington state patrol's budget request.

3 (5) The director of fire protection, shall implement and
4 administer, within constraints established by budgeted resources, the
5 policies, objectives, and priorities of the board and all duties of the
6 chief of the Washington state patrol that are to be carried out through
7 the director of fire protection. Such administration shall include
8 negotiation of agreements with the state board for community and
9 technical colleges, the higher education coordinating board, and the
10 state colleges and universities as provided in RCW (~~43.63A.320~~)
11 43.43.934. Programs covered by such agreements shall include, but not
12 be limited to, planning curricula, developing and delivering
13 instructional programs and materials, and using existing instructional
14 personnel and facilities. Where appropriate, such contracts shall also
15 include planning and conducting instructional programs at the state
16 fire service training center.

17 (6) The director of fire protection shall establish and maintain
18 the statewide CBRNE response program required under this act.

19 (7) The chief of the Washington state patrol, through the director
20 of fire protection, shall seek the advice of the board in carrying out
21 his or her duties under law.

22 NEW SECTION. Sec. 15. The sum of one million two hundred thousand
23 dollars, or as much thereof as may be necessary, is appropriated for
24 the biennium ending June 30, 2011, from the local toxics control
25 account to the Washington state patrol for the purposes of implementing
26 phase one of the statewide CBRNE response program.

27 NEW SECTION. Sec. 16. Sections 2 through 13 of this act
28 constitute a new chapter in Title 43 RCW.

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