
HOUSE BILL 1039

State of Washington

61st Legislature

2009 Regular Session

By Representatives Driscoll, Ericks, Haler, Seaquist, Simpson, Conway, Hurst, Haigh, Goodman, O'Brien, Morrell, Kelley, Wood, Kenney, Hunt, and White

Prefiled 12/15/08. Read first time 01/12/09. Referred to Committee on Public Safety & Emergency Preparedness.

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; and
3 creating a new section.

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 purpose of this act is to establish a statewide CBRNE
2 response program that relies on a network of regional response teams
3 that operate with standardized training and equipment.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

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

8 (2) "CBRNE incident" means an incident creating a danger or the
9 possibility of a danger to persons, property, or the environment as a
10 result of spillage, seepage, fire, explosion, or release of a CBRNE
11 agent.

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

14 NEW SECTION. **Sec. 3.** (1) The director shall establish and
15 maintain a statewide CBRNE response program. This program must
16 include:

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

18 (b) A network of two regional CBRNE teams, one hazmat and one bomb,
19 to respond to CBRNE incidents within their respective regions and to
20 operate outside their respective regions to assist other regional teams
21 when needed;

22 (c) Standards for training, equipment, and operational procedures
23 for regional teams and other responders concerning responses to CBRNE
24 incidents;

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

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

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

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

33 NEW SECTION. **Sec. 4.** (1) The director shall divide the state into
34 five CBRNE response regions. In making this division, the director
35 must consider: (a) The history of any CBRNE or hazardous materials

1 incident locations throughout the state and the factors that contribute
2 to those incidents; (b) the current geographical distribution of CBRNE
3 or hazardous materials responders; and (c) any existing regional
4 divisions in the state.

5 (2) After consultation with the policy and operations advisory
6 groups established under section 6 of this act, the director may, with
7 good cause, modify boundaries of the established regions.

8 NEW SECTION. **Sec. 5.** (1) After consultation with the policy and
9 operations advisory groups established under section 6 of this act, the
10 director shall determine the number of technicians and the level of
11 training required of the response teams for that region. These
12 determinations must be made based upon the risk that each region faces
13 from a CBRNE incident.

14 (2) The director shall contract with two regional response teams
15 from each of the five regions. The director may contract only with a
16 unit of local government with respect to a regional response team.
17 Units of local government that are located in the same region may enter
18 into intergovernmental agreements for the formation of a regional
19 response team.

20 NEW SECTION. **Sec. 6.** (1) Two advisory groups are created to
21 assist the director in implementing and managing the program. The
22 policy advisory group will advise the director on budget, staffing,
23 policy, and other management-related issues. The operations advisory
24 group will advise the director on technical and operational issues,
25 including training, equipment, response, and performance standards.
26 Both advisory groups serve a strictly advisory role to the director in
27 all matters.

28 (2) The policy advisory group shall consist of six members
29 appointed by the director and shall include: (a) Two members nominated
30 by and representing the Washington association of sheriffs and police
31 chiefs; (b) two members nominated by and representing the Washington
32 state fire chiefs association; (c) one member nominated by and
33 representing the Washington state emergency management council; and (d)
34 one member representing the director's office.

35 (3) The operations advisory group shall consist of voting and
36 nonvoting members. Voting members shall include two members from each

1 CBRNE response region appointed by and representing the contracting
2 units of local government under section 5(2) of this act. Nonvoting
3 members shall include one appointed representative from each of the
4 following state agencies: Ecology, health, transportation, Washington
5 state patrol office of the state fire marshal, military, and the
6 emergency management division of the military department. In addition,
7 the director shall seek appointment of one tribal nation representative
8 and two private sector representatives.

9 (4) All members serve at the discretion of the appointing
10 authority.

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

13 NEW SECTION. **Sec. 7.** (1) The primary duty of a regional response
14 team is to stabilize a CBRNE incident. Regional response teams are
15 limited to emergency responses and the evaluation and documentation
16 functions arising from CBRNE incidents that threaten life, property, or
17 the environment. A regional response team must respond to the best of
18 its ability, subject to the limitations of available equipment and
19 personnel. Regional response teams must work with known local hazard
20 industries, emergency response and management agencies, and local
21 emergency planning committees to ensure an appropriate integration of
22 plans, training, and operational response.

23 (2) A regional response team may sample, test, analyze, treat,
24 remove, recover, package, monitor, or track the involvement of a CBRNE
25 agent only if it is incidentally necessary to identify a CBRNE agent,
26 prevent the release or threat of a release of a CBRNE agent, or
27 stabilize a CBRNE incident.

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

32 (4) A regional response team is not required to maintain general
33 security or safety perimeters, locate underground utilities, ensure
34 appropriate traffic control services, conduct hydrological
35 investigations and analysis, or provide testing, removal, or disposal
36 of underground storage tank contamination at or near the CBRNE incident
37 to which the team is dispatched.

1 NEW SECTION. **Sec. 8.** The director must establish procedures for
2 the dispatch of a regional response team to a CBRNE incident. These
3 procedures must include standards for the evaluation of a CBRNE
4 incident by a state or local agency and, if the incident cannot be
5 controlled with local resources, a process for the state or local
6 agency to request the assistance of a regional response team.

7 NEW SECTION. **Sec. 9.** (1) If a unit of local government requests
8 the assistance of a regional response team under the dispatch
9 procedures set forth under section 8 of this act, then, upon the team's
10 arrival, the unit of local government must provide the team with site-
11 specific and geographical and topological information sufficient to
12 support the tactical decisions required by the situation.

13 (2) A unit of local government, upon request by the appropriate
14 regional response team, must provide any preplanning information that
15 the team reasonably requests. This information may include, without
16 limitation:

17 (a) Facility site-specific floor plans and occupancy information;

18 (b) Local maps; and

19 (c) An inventory of the types and levels of emergency operational
20 support and resources available locally.

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

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

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

1 NEW SECTION. **Sec. 10.** (1) The statewide CBRNE response account is
2 created in the custody of the state treasurer.

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

4 (a) All moneys recovered from cost reimbursements under section 11
5 of this act;

6 (b) All grant proceeds not otherwise required to be maintained in
7 a separate account;

8 (c) All moneys transferred under sections 13 and 14 of this act;
9 and

10 (d) Any other moneys appropriated or transferred to the account by
11 the legislature.

12 (3) Expenditures from the account may be used only as provided in
13 this act. Only the director or his or her designee may authorize
14 expenditures from the account. The account is subject to allotment
15 procedures under chapter 43.88 RCW, but an appropriation is not
16 required for expenditures.

17 NEW SECTION. **Sec. 11.** (1) If a specific person or entity is
18 responsible for the necessary expenses incurred by the director or a
19 CBRNE regional response team pertaining to its response to a CBRNE
20 incident, then the director shall notify the responsible party by
21 appropriate order. The director may not issue an order pertaining to
22 a project or activity that was completed more than five years prior to
23 the date of the proposed issuance of the order. The order must state
24 the findings of the director concerning liability, the amount of
25 necessary expenses incurred in conducting the response, and a notice
26 that the amount is due and payable immediately upon receipt of the
27 order.

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

34 (3) If the responsible party fails to pay the amount specified in
35 the order issued by the director or if an application has been made
36 within thirty days as provided in this section and the amount provided
37 in the order issued by the department subsequent to such application is

1 not paid within fifteen days after receipt thereof, the attorney
2 general, upon request of the director, shall bring an action on behalf
3 of the state in the superior court of Thurston county or any county in
4 which the person to which the order is directed does business, or in
5 any other court of competent jurisdiction, to recover the amount
6 specified in the final order of the director.

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

10 (5) All moneys recovered under this section must be deposited into
11 the statewide CBRNE response account established under section 10 of
12 this act.

13 (6) For the purposes of this section, "necessary expenses" means
14 the expenses incurred by the director and assisting state or local
15 agencies for (a) investigating the source of the incident; (b)
16 conducting actions to stabilize the CBRNE incident; and (c) enforcing
17 the provisions of this chapter and collecting for damages caused by a
18 CBRNE incident.

19 NEW SECTION. **Sec. 12.** (1) The director shall establish procedures
20 to actively seek grants from public or private sources for the
21 operation and administration of the statewide CBRNE response program.
22 The director shall work in cooperation with the state military
23 department and local jurisdictions to obtain grant funding for the
24 program.

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

28 NEW SECTION. **Sec. 13.** (1) On July 1, 2010, and on each July 1st
29 thereafter, the director shall notify the state treasurer if the
30 combined total amount in the statewide CBRNE response account and any
31 dedicated grant accounts is less than four million two hundred thousand
32 dollars.

33 (2) Within thirty days after receiving this notification, the state
34 treasurer shall transfer, into the statewide CBRNE response account,
35 the amount needed to bring the moneys for the program to 4.2 million

1 dollars. The state treasurer shall transfer this amount from the local
2 toxics control account.

3 NEW SECTION. **Sec. 14.** (1) On July 1, 2010, and on each July 1st
4 thereafter, the director shall notify the state treasurer if the
5 combined total amount in the statewide CBRNE response account and any
6 dedicated grant accounts exceeds six million dollars.

7 (2) Within thirty calendar days after receiving this notification,
8 the state treasurer shall transfer the amount exceeding six million
9 dollars from the statewide CBRNE response account to the local toxics
10 control account or to any other fund from which moneys were transferred
11 into the statewide CBRNE response account.

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

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

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

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

31 (4) The director of fire protection, in accordance with the
32 policies, objectives, and priorities of the fire protection policy
33 board, shall prepare a biennial budget pertaining to fire protection
34 services. Such biennial budget shall be submitted as part of the
35 Washington state patrol's budget request.

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

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

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

20 NEW SECTION. **Sec. 16.** If specific funding for the purposes of
21 this act, referencing this act by bill or chapter number, is not
22 provided by July 1, 2009, in the omnibus appropriations act, this act
23 is null and void.

24 NEW SECTION. **Sec. 17.** Sections 1 through 14 of this act
25 constitute a new chapter in Title 43 RCW.

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