
HOUSE BILL 1223

State of Washington

60th Legislature

2007 Regular Session

By Representatives Simpson, Curtis, O'Brien, Appleton, Moeller, B. Sullivan, Schual-Berke and Lantz

Read first time 01/15/2007. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to establishing the statewide CBRNE response
2 program; amending RCW 43.43.938; adding a new chapter to Title 43 RCW;
3 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 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, without limitation:

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

18 (b) A network of regional teams to respond to CBRNE incidents
19 within their respective regions and to operate outside their respective
20 regions to assist other regional teams;

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

23 (d) Procedures for reimbursing regional teams for costs incurred by
24 approved responses; and

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

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

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

31 NEW SECTION. **Sec. 4.** (1) The director shall divide the state into
32 CBRNE response regions. In making this division, the director must
33 consider (a) the history of any CBRNE or hazardous materials incident
34 locations throughout the state and the factors that contribute to those

1 incidents; (b) the current geographical distribution of CBRNE or
2 hazardous materials responders; and (c) any existing regional divisions
3 in the state.

4 (2) After consultation with the technical advisory committee
5 established under section 6 of this act, the director may, with good
6 cause, modify boundaries of the established regions.

7 NEW SECTION. **Sec. 5.** (1) For each region, the director shall
8 determine the number of response teams, the number of technicians, and
9 the level of training required of the response teams for that region.
10 These determinations must be made based upon the risk that each region
11 faces from a CBRNE incident.

12 (2) The director shall contract with one or more regional response
13 teams from each of the regions, as determined under subsection (1) of
14 this section. The director may contract only with a unit of local
15 government with respect to a regional response team. Units of local
16 government that are located in the same region may enter into
17 intergovernmental agreements for the formation of a regional response
18 team.

19 (3) After consultation with the technical advisory committee
20 established under section 6 of this act, the director may modify the
21 number of response teams, the number of technicians, or the level of
22 training required for regional response teams.

23 NEW SECTION. **Sec. 6.** (1) The technical advisory committee is
24 created to assist the director in his or her implementation and
25 management of the program, to help formulate administrative rules, and
26 to render advice on training and equipment standards, planning,
27 operational protocols, and policy issues. The technical advisory
28 committee has a strictly advisory role to the director in all matters.

29 (2) The technical advisory committee consists of ex officio members
30 and appointed members.

31 (a) The ex officio members include the executives or administrative
32 heads, or their designees, of the following state organizations:

- 33 (i) The state emergency response commission;
- 34 (ii) The department of health;
- 35 (iii) The department of ecology; and
- 36 (iv) The office of the attorney general.

1 Additionally, the executive or administrative head of any other
2 state organization may, with the consent of the director, appoint
3 himself or herself or a designee to be a member of the committee.

4 (b) The appointed members consist of the following:

5 (i) One member from each CBRNE response region appointed by and
6 representing the contracting units of local government under section
7 5(2) of this act; and

8 (ii) Any additional member appointed by the director as the
9 director deems appropriate.

10 (c) All appointed members serve at the discretion of the appointing
11 authority.

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

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

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

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

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

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

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

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

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

33 (6) For the purposes of this section, "necessary expenses" means
34 the expenses incurred by the director and assisting state or local
35 agencies for (a) investigating the source of the incident; (b)
36 conducting actions to stabilize the CBRNE incident; and (c) enforcing
37 the provisions of this chapter and collecting for damages caused by a
38 CBRNE incident.

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

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

10 NEW SECTION. **Sec. 13.** (1) On July 1, 2008, and on each July 1st
11 thereafter, the director shall notify the state treasurer if the
12 combined total amount in the statewide CBRNE response account and any
13 dedicated grant accounts is less than seventeen million dollars.

14 (2) Within thirty days after receiving this notification, the state
15 treasurer shall transfer, into the statewide CBRNE response account,
16 the amount needed to bring the moneys for the program to seventeen
17 million dollars. The state treasurer shall transfer this amount from
18 the general fund.

19 NEW SECTION. **Sec. 14.** (1) On July 1, 2008, and on each July 1st
20 thereafter, the director shall notify the state treasurer if the
21 combined total amount in the statewide CBRNE response account and any
22 dedicated grant accounts exceeds twenty-five million dollars.

23 (2) Within thirty calendar days after receiving this notification,
24 the state treasurer shall transfer the amount exceeding twenty-five
25 million dollars from the statewide CBRNE response account to the
26 general fund or to any other fund from which moneys were transferred
27 into the statewide CBRNE response account.

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

30 (1) Wherever the term state fire marshal appears in the Revised
31 Code of Washington or the Washington Administrative Code it shall mean
32 the director of fire protection.

33 (2) The chief of the Washington state patrol shall appoint an
34 officer who shall be known as the director of fire protection. The
35 board, after consulting with the chief of the Washington state patrol,

1 shall prescribe qualifications for the position of director of fire
2 protection. The board shall submit to the chief of the Washington
3 state patrol a list containing the names of three persons whom the
4 board believes meet its qualifications. If requested by the chief of
5 the Washington state patrol, the board shall submit one additional list
6 of three persons whom the board believes meet its qualifications. The
7 appointment shall be from one of the lists of persons submitted by the
8 board.

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

12 (4) The director of fire protection, in accordance with the
13 policies, objectives, and priorities of the fire protection policy
14 board, shall prepare a biennial budget pertaining to fire protection
15 services. Such biennial budget shall be submitted as part of the
16 Washington state patrol's budget request.

17 (5) The director of fire protection, shall implement and
18 administer, within constraints established by budgeted resources, the
19 policies, objectives, and priorities of the board and all duties of the
20 chief of the Washington state patrol that are to be carried out through
21 the director of fire protection. Such administration shall include
22 negotiation of agreements with the state board for community and
23 technical colleges, the higher education coordinating board, and the
24 state colleges and universities as provided in RCW (~~43.63A.320~~)
25 43.43.934. Programs covered by such agreements shall include, but not
26 be limited to, planning curricula, developing and delivering
27 instructional programs and materials, and using existing instructional
28 personnel and facilities. Where appropriate, such contracts shall also
29 include planning and conducting instructional programs at the state
30 fire service training center.

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

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

36 NEW SECTION. **Sec. 16.** The sum of twenty-three million dollars, or

1 as much thereof as may be necessary, is appropriated for the fiscal
2 year ending June 30, 2008, from the general fund to the director of
3 fire protection for the purposes of this act.

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

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