

House BILL NO. 461

INTRODUCED BY

Wm Ryan Hager *Burnett Beck* ORR
Schick *Keenan Swanson* MERCER *M. Hanson* *B. Brown* *Goodson*

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIAL INCIDENTS ACT; AMENDING SECTION 75-1-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." *CARINOS* *Foster* *Stang* *Nitel* *Dupe*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana Response to Hazardous Material Incidents Act".

NEW SECTION. **Section 2. Purpose.** It is the purpose of [sections 1 through 14] to:

- (1) provide that adequate hazardous material emergency response capability exists in the state in order to protect the health and safety of Montana citizens and the environment;
- (2) delineate those state agencies responsible for responding to a hazardous material incident;
- (3) provide for the control and management of incidents;
- (4) provide for the cooperation of other state agencies and local governments in incident management; and
- (5) provide for the formulation of a comprehensive, statewide incident management and hazardous material response support plan.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 14], the following definitions apply:

- (1) "Commission" means the state emergency response commission.
- (2) "Division" means the division of disaster and emergency services in the department of military affairs.
- (3) "Duration of response" means a period of time beginning when a emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence

1 by the most direct route and includes the time required to replace and return all materials used for the
2 incident to the same or similar condition and state of readiness as before the response.

3 (4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as
4 defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or
5 deleterious substance, and radioactive material.

6 (5) "Hazardous material incident response team" means an organized group of trained response
7 personnel, operating under an emergency response plan and appropriate standard operating procedures,
8 that is expected to perform work to control an actual release or threatened release of hazardous material
9 requiring close approach to the material, to respond to releases or threatened releases of hazardous material
10 for the purpose of control or stabilization of the incident, and to provide technical assistance to local
11 jurisdictions.

12 (6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons;
13 explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

14 (b) The term does not include radioactive material.

15 (7) "Incident" means an event involving the release or threat of release involving hazardous material
16 that may cause injury to persons, the environment, or property.

17 (8) "Local emergency operations plan" means the local and interjurisdictional disaster and
18 emergency plan developed pursuant to 10-3-401.

19 (9) "Local emergency response authority" means the person or persons designated by the city,
20 county, or commission to be responsible for the management of an incident at the local level.

21 (10) "Orphaned hazardous material" means hazardous material of which the owner cannot be
22 identified.

23 (11) "Plan" means the Montana incident management and hazardous material response support
24 plan.

25 (12) (a) "Radioactive material" means any material or combination of material that spontaneously
26 emits ionizing radiation.

27 (b) The term does not include material in which the specific activity is not greater than 0.002
28 microcuries per gram of material unless the material is determined to be radioactive by the U.S.
29 environmental protection agency or the U.S. occupational safety and health administration.

30 (13) "State hazardous material incident response team" means persons who are designated as state

1 employees by the commission while they are engaged in activities as provided for in [section 4] and may
2 include members of the commission and local and state government responders.

3 (14) "Threat of release" or "threatened release" means an indication of the possibility of the release
4 of a hazardous material into the environment.

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6 **NEW SECTION. Section 4. State emergency response commission.** (1) There is a state
7 emergency response commission that is attached to the department for administrative purposes. The
8 commission must consist of 20 members appointed by the governor. The commission must include
9 representatives of the national guard, air force, state and local fire organizations, state and local emergency
10 medical responders, state and local law enforcement agencies, local emergency planning committees, a
11 Montana utility company, and a railroad company doing business in the state, representatives from the
12 department of health and environmental sciences, the division, the department of transportation, the
13 department of administration, the department of justice, the department of fish, wildlife, and parks, and the
14 office of the governor, and any other representatives that the governor appoints. The members shall serve
15 without compensation. The governor shall appoint a presiding officer from the appointees.

16 (2) The commission shall implement the provisions of [sections 1 through 14], and in so doing, the
17 commission may create and implement a state hazardous material incident response team to respond to
18 incidents. The members of the team must be certified in accordance with the plan.

19 (3) The commission may enter into written agreements with each entity or person providing
20 equipment or services to the state hazardous material incident response team.

21 (4) The commission or its designee may direct that the state hazardous material incident response
22 team be available and respond, when requested by a local emergency response authority, to incidents
23 according to the plan.

24 (5) The commission may contract with persons to meet state emergency response needs for the
25 state hazardous material incident response team.

26 (6) The commission may advise, consult, cooperate, and enter into agreements with agencies of
27 the state and federal government, other states and their state agencies, cities, counties, tribal governments,
28 and other persons concerned with emergency response and matters relating to and arising out of incidents.

29 (7) The commission may encourage, participate in, or conduct studies, investigations, training,
30 research, and demonstrations for and with the state hazardous material incident response team, local

1 emergency responders, and other interested persons.

2 (8) The commission may collect and disseminate information relating to emergency response to
3 incidents.

4 (9) The commission may accept and administer grants, gifts, or other funds, conditional or
5 otherwise, made to the state for emergency response activities provided for in [sections 1 through 14].

6 (10) The commission may prepare, coordinate, implement, and update a plan, which coordinates
7 state and local emergency authorities, to respond to incidents within the state. The plan must be consistent
8 with [sections 1 through 14]. All state emergency response responsibilities relating to an incident must be
9 defined by the plan.

10 (11) The commission has the powers and duties of a state emergency response commission under
11 the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq.,
12 except that the division shall oversee the creation, annual local review, and exercise and revision of the
13 local emergency operations plan as provided by state law.

14 (12) The commission shall promulgate rules and procedures limited to cost recovery procedures,
15 certification of state response team members, and deployment of the state hazardous material incident
16 response team, which must be a part of the plan.

17 (13) All state agencies and institutions shall cooperate with the commission in the commission's
18 efforts to carry out its duties under [sections 1 through 14].

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20 **NEW SECTION. Section 5. Commission budget and expenditures.** (1) The commission shall
21 submit its budget to the division.

22 (2) The commission shall expend any funds appropriated to it in the following priority:

23 (a) payment of workers' compensation premiums for coverage of state hazardous material incident
24 response team members;

25 (b) training activities for the state hazardous material incident response team;

26 (c) equal payments to each hazardous material incident response team as compensation for duties
27 established in the plan; and

28 (d) any remaining funds to be used at the discretion of the commission for programs related to the
29 plan.

30

1 **NEW SECTION. Section 6. Local emergency response authorities -- designation.** (1) The
2 governing body of each incorporated city and county shall designate the local emergency response authority
3 for incidents that occur within its jurisdiction.

4 (2) Local emergency response authority members must be trained in hazardous material incident
5 response in compliance with 29 CFR 1910.120(q), as amended.

6 (3) An incorporated city may, with the mutual consent of the county, designate the county as its
7 local emergency response authority and participate in the local emergency operations plan for incident
8 response.

9 (4) If an incident occurs in an area in which local emergency response authority has not been
10 designated, the presiding officer of the board of county commissioners must be the local emergency
11 response authority for the incident for the purposes of [sections 1 through 14].
12

13 **NEW SECTION. Section 7. Local emergency response authorities -- powers and duties.** (1) Every
14 local emergency response authority designated pursuant to [sections 1 through 14] shall respond to
15 incidents occurring within its jurisdiction according to the local emergency operations plan. The local
16 emergency response authority shall also respond to an incident that initially occurs within its jurisdiction
17 but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an
18 area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive
19 at the scene of the incident shall perform the initial emergency response duties.

20 (2) Each local emergency response authority shall define in writing its incident management
21 structure and specifically define the agency that will provide incident command.

22 (3) The incident commander shall declare that the emergency situation associated with an incident
23 has ended when the acute threat to public health and safety or to the environment has been sufficiently
24 addressed.
25

26 **NEW SECTION. Section 8. Controlling provisions for state of emergency -- liability of responsible**
27 **persons.** In the event that a state of emergency is declared by proper authority pursuant to 10-3-302, as
28 the result of an incident, the provisions of 10-3-303 govern.
29

30 **NEW SECTION. Section 9. Notification of release.** (1) A person responsible for reporting a release

1 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42
2 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release,
3 other than a permitted release, notify the division of the release.

4 (2) The division shall notify the commission of releases or threatened releases as defined in the
5 plan.

6 (3) The division shall immediately notify the department of health and environmental sciences of
7 any release reported and who will respond according to the plan.

8 (4) Any person who does not make notification in accordance with the provisions of this section
9 is liable for a civil penalty not to exceed \$10,000 for each day the violation continues to a maximum of
10 \$100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected
11 must be deposited in the environmental contingency account provided for in 75-1-1101.

12 (5) Compliance with the reporting requirements of this section does not relieve any person of the
13 obligation to report the same incident under any other applicable state or federal law, regulation, or other
14 requirement.

15
16 **NEW SECTION. Section 10. Right to reimbursement.** (1) State hazardous material incident
17 response team members may submit claims to the commission for reimbursement of documented costs
18 incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed
19 the duration of response.

20 (2) A party who is not a part of the state hazardous material incident response team and is not
21 liable under federal or state law may submit a claim to the commission for costs if the claim is associated
22 with a request by the state hazardous material incident response team or the commission.

23 (3) Claims for reimbursement must be submitted to the commission within 60 days after
24 termination of the response to the incident for the state's determination of payment, if any.

25 (4) Reimbursement may be made only after the commission finds that the actions by the applicant
26 were taken in response to an incident as defined in [sections 1 through 14] and only if adequate funds are
27 available.

28
29 **NEW SECTION. Section 11. Deficiency warrants for reimbursement of response costs.** (1) (a)
30 The commission shall review all claims for reimbursement and make recommendations to the governor as

1 to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the
2 issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to
3 the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated
4 with emergency actions taken pursuant to [sections 1 through 14].

5 (b) The costs of routine firefighting procedures are not reimbursable costs under [sections 1
6 through 14].

7 (2) Reimbursement must be in accordance with the schedule defined in the plan.

8 (3) The decision of the governor is final and nonappealable.

9 (4) This section may not be construed to change or impair any right of recovery or subrogation
10 arising under any other provision of law.

11
12 **NEW SECTION. Section 12. Cost recovery and civil remedies.** (1) Cost recovery is the duty of
13 the city or county having authority where an incident occurred.

14 (2) The commission shall ensure the recovery of state expenditures according to the plan.

15 (3) A person responsible for an incident is liable for attorney fees and costs of the commission
16 incurred in recovering costs associated with responding to an incident.

17 (4) The remedy for the recovery of emergency response costs identified in [sections 1 through 14]
18 is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

19 (5) Any person who receives compensation for the emergency response costs pursuant to any
20 other federal or state law is precluded from recovering compensation for those costs pursuant to this
21 chapter.

22 (6) Except for the commission and the state hazardous material incident response team, [sections
23 1 through 14] do not otherwise affect or modify in any way the obligations or liability of any person under
24 any other provision of state or federal law, including common law, for damages, injury, or loss resulting
25 from the release or threatened release of any hazardous material or for remedial action or the costs of
26 remedial action for a release or threatened release.

27 (7) Any person who is not a liable party under the federal Comprehensive Environmental Response,
28 Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive
29 Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance
30 in response to an emergency situation associated with an incident may file a civil action against the

1 responsible party for recoverable costs that have not been reimbursed by the state.

2 (8) Recoveries by the state for reimbursed costs under this section must be deposited in the
3 environmental contingency account to offset amounts paid as reimbursement.

4 (9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full
5 cost associated with an incident and the cost of collection described in this section, the state shall recover
6 from the city or county having authority where the incident occurred an amount equal to 25% of the total
7 cost identified pursuant to [sections 1 through 14].

8 (b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible
9 amount must be equally divided among the jurisdictions.

10

11 **NEW SECTION. Section 13. Liability of persons and response team members rendering assistance.**

12 The commission and the state hazardous material incident response team are not liable under [sections 1
13 through 14] for injuries, costs, damages, expenses, or other liabilities resulting from the release or
14 threatened release of a hazardous material. The immunity includes but is not limited to indemnification,
15 contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property,
16 or economic loss. A person becomes a member of the state hazardous material incident response team
17 when the person is contacted for response regardless of the person's location.

18

19 **NEW SECTION. Section 14. Required assistance in hazardous material incident.** An owner or
20 agent of the owner of a hazardous material involved in an incident, a person causing an incident, a person
21 transporting a hazardous material involved in an incident, and a person owning or occupying property
22 involved in an incident shall assist the state as requested by the incident commander in responding to an
23 emergency situation associated with the incident as may be necessary to address an acute threat to public
24 health or safety or to the environment until the incident commander declares that the emergency situation
25 is over.

26

27 **Section 15.** Section 75-1-1101, MCA, is amended to read:

28 **"75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental
29 contingency account within the state special revenue fund established in 17-2-102. The environmental
30 contingency account is controlled by the governor.

1 (2) At the beginning of each biennium, \$175,000 must be allocated to the environmental
2 contingency account from the interest income of the resource indemnity trust fund with the following
3 exceptions:

4 (a) if at the beginning of any biennium the unobligated cash balance in the environmental
5 contingency account equals or exceeds \$750,000, ~~an~~ allocation will not be made; and

6 (b) if at the beginning of any biennium the unobligated cash balance in the environmental
7 contingency account is less than \$750,000, then an amount less than or equal to the difference between
8 the unobligated cash balance and \$750,000, but not to exceed \$175,000, must be allocated to the
9 environmental contingency account from the interest income of the resource indemnity trust fund.

10 (3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental
11 contingency account upon the authorization of the governor to meet unanticipated public needs consistent
12 with the following objectives:

13 (a) to support renewable resource development projects in communities that face an emergency
14 or imminent need for the services or to prevent the physical failure of a project;

15 (b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent
16 physical threat or during an emergency, not including:

17 (i) natural disasters adequately covered by other funding sources; or

18 (ii) fire;

19 (c) to respond to an emergency or imminent threat to persons, property, or the environment caused
20 by mineral development; ~~and~~

21 (d) to respond to an emergency or imminent threat to persons, property, or the environment caused
22 by a hazardous material; and

23 ~~(d)~~(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other
24 necessary actions, including the construction of facilities, to respond to actual or potential threats to
25 persons, property, or the environment caused by hazardous wastes or other hazardous materials.

26 (4) Interest from funds in the environmental contingency account accrues to the resource indemnity
27 trust interest account.

28 (5) The governor shall submit, as a part of the information required by 17-7-111, a complete
29 financial report on the environmental contingency account, including a description of all expenditures made
30 since the preceding report."

1 NEW SECTION. **Section 16. Codification instruction.** [Sections 1 through 14] are intended to be
2 codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to
3 [sections 1 through 14].

4

5 NEW SECTION. **Section 17. Two-thirds vote required.** Because [section 14] limits governmental
6 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
7 each house of the legislature for passage.

8

9 NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
11 applications, the part remains in effect in all valid applications that are severable from the invalid
12 applications.

13

14 NEW SECTION. **Section 19. Effective date.** [This act] is effective on passage and approval.

15

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0461, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill creating the Montana Emergency Response to Hazardous Material Incidents Act.

ASSUMPTIONS:

Department of Military Affairs:

1. The Department of Military Affairs, through the Disaster and Emergency Services Division (DES), currently provides limited planning, training, and administrative support to the State Emergency Response Commission (SERC) and this will continue within the present law base.
2. Federal funding will continue to be granted to the SERC and DES to support hazardous materials planning and training.
3. Complete implementation of this act will not take place until the completion of the Montana Incident Management and Hazardous Material Response Support Plan (MIMHMRSP).
4. The DES does not expect a fiscal impact during the 1997 biennium; however, the MIMHMRSP may identify future needs. Section 5 of the bill allows the SERC to submit its budget to DES; it is assumed that the commission's budget request will be included in the DES program budget in the Governor's Executive Budget in future biennia. The estimated future amounts and funding source(s) are not subject to reasonable estimate.
5. Statutory appropriation authority will be available for hazardous material incident response expenditures from the environmental contingency account controlled by the Governor. The biennial expense amounts are not subject to reasonable estimate.

Department of Health and Environmental Sciences (DHES):

6. The DHES has existing legal authorities and responsibilities controlling waste disposal, providing protection of state waters, and providing for clean-up and/or remediation orders that are not altered by this bill.
7. The DHES role in the State Emergency Response Commission (SERC) would not be significantly affected by the provisions of this bill. The SERC would be the administrative and legal responsibility of the Disaster and Emergency Services Division of the Department of Military Affairs.
8. Although roles and responsibilities of state agencies are clarified in this bill, the role of DHES in emergency response would not be significantly altered by this bill.
9. The bill has no fiscal impact on the DHES.

FISCAL IMPACT:

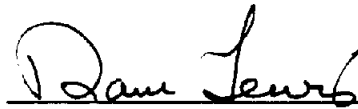
There is no fiscal impact during the 1997 biennium.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

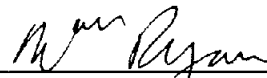
Local government responders to emergency incidents would have clear authority to seek cost recovery for expenditures incurred in their emergency response actions.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The bill would provide an adequate statewide hazardous material response system that would decrease the threat to the public, responders, the environment, and property. The bill will clearly assign fiscal responsibility for response to spills of hazardous materials or other types of hazardous material incidents to the responsible parties. State and local government responders will have a clear authority and procedure to seek recovery of their emergency response costs and the overall incident costs may decrease.

 2-13-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



WILLIAM M. RYAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0461, as introduced

HB 461

1 HOUSE BILL NO. 461

2 INTRODUCED BY RYAN, HARPER, BURNETT, PECK, ORR, SCHWINDEN, KEENAN, SWANSON,
3 MERCER, M. HANSON, BROWN, JACOBSON, DEVLIN, GRINDE, FOSTER, STANG, HERTEL, GAGE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO
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7 **NEW SECTION. Section 4. State emergency response commission.** (1) There is a state
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9 commission must consist of 20 members appointed by the governor. The commission must include
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11 medical responders, state and local law enforcement agencies, local emergency planning committees, a
12 Montana utility company, and a railroad company doing business in the state, representatives from the
13 department of health and environmental sciences, the division, the department of transportation, the
14 department of administration, the department of justice, the department of fish, wildlife, and parks, and the
15 office of the governor, and any other representatives that the governor appoints. The members shall serve
16 without compensation. The governor shall appoint a presiding officer from the appointees.

17 (2) The commission shall implement the provisions of [sections 1 through 14], and in so doing, the
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4 (2) Local emergency response authority members must be trained in hazardous material incident
5 response in compliance with 29 CFR 1910.120(q), as amended.

6 (3) An incorporated city may, with the mutual consent of the county, designate the county as its
7 local emergency response authority and participate in the local emergency operations plan for incident
8 response.

9 (4) If an incident occurs in an area in which local emergency response authority has not been
10 designated, the presiding officer of the board of county commissioners must be the local emergency
11 response authority for the incident for the purposes of [sections 1 through 14].

12
13 **NEW SECTION. Section 7. Local emergency response authorities -- powers and duties.** (1) Every
14 local emergency response authority designated pursuant to [sections 1 through 14] shall respond to
15 incidents occurring within its jurisdiction according to the local emergency operations plan. The local
16 emergency response authority shall also respond to an incident that initially occurs within its jurisdiction
17 but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an
18 area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive
19 at the scene of the incident shall perform the initial emergency response duties.

20 (2) Each local emergency response authority shall define in writing its incident management
21 ~~structure~~ **SYSTEM** and specifically define the agency that will ~~provide~~ **BE THE** incident ~~command~~
22 **COMMANDER**.

23 (3) The incident commander shall declare that the emergency situation associated with an incident
24 has ended when the acute threat to public health and safety or to the environment has been sufficiently
25 addressed.

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27 **NEW SECTION. Section 8. Controlling provisions for state of emergency -- liability of responsible**
28 **persons.** In the event that a state of emergency is declared by proper authority pursuant to 10-3-302, as
29 the result of an incident, the provisions of 10-3-303 govern.

1 **NEW SECTION. Section 9. Notification of release.** (1) A person responsible for reporting a release
2 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42
3 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release,
4 other than a permitted release, notify the division of the release.

5 (2) The division shall notify the commission of releases or threatened releases as defined in the
6 plan.

7 (3) The division shall immediately notify the department of health and environmental sciences of
8 any release reported and who will respond according to the plan.

9 (4) Any person who does not make notification in accordance with the provisions of this section
10 is liable for a civil penalty not to exceed \$10,000 for each day the violation continues to a maximum of
11 \$100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected
12 must be deposited in the environmental contingency account provided for in 75-1-1101.

13 (5) Compliance with the reporting requirements of this section does not relieve any person of the
14 obligation to report the same incident under any other applicable state or federal law, regulation, or other
15 requirement.

16
17 **NEW SECTION. Section 10. Right to reimbursement.** (1) State hazardous material incident
18 response team members may submit claims to the commission for reimbursement of documented costs
19 incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed
20 the duration of response.

21 (2) A party who is not a part of the state hazardous material incident response team and is not
22 liable under federal or state law may submit a claim to the commission for costs if the claim is associated
23 with a request by the state hazardous material incident response team or the commission.

24 (3) Claims for reimbursement must be submitted to the commission within 60 days after
25 termination of the response to the incident for the state's determination of payment, if any.

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27 were taken in response to an incident as defined in [sections 1 through 14] and only if adequate funds are
28 available.

29
30 **NEW SECTION. Section 11. Deficiency warrants for reimbursement of response costs.** (1) (a)

1 The commission shall review all claims for reimbursement and make recommendations to the governor as
2 to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the
3 issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to
4 the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated
5 with emergency actions taken pursuant to [sections 1 through 14].

6 (b) The costs of routine firefighting procedures are not reimbursable costs under [sections 1
7 through 14].

8 (2) Reimbursement must be in accordance with the schedule defined in the plan.

9 (3) The decision of the governor is final and nonappealable.

10 (4) This section may not be construed to change or impair any right of recovery or subrogation
11 arising under any other provision of law.

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13 **NEW SECTION. Section 12. Cost recovery and civil remedies.** (1) Cost recovery is the duty of
14 the city or county having authority where an incident occurred.

15 (2) The commission shall ensure the recovery of state expenditures according to the plan.

16 (3) A person responsible for an incident is liable for attorney fees and costs of the commission
17 incurred in recovering costs associated with responding to an incident.

18 (4) The remedy for the recovery of emergency response costs identified in [sections 1 through 14]
19 is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

20 (5) Any person who receives compensation for the emergency response costs pursuant to any
21 other federal or state law is precluded from recovering compensation for those costs pursuant to this
22 chapter.

23 (6) Except for the commission and the state hazardous material incident response team, [sections
24 1 through 14] do not otherwise affect or modify in any way the obligations or liability of any person under
25 any other provision of state or federal law, including common law, for damages, injury, or loss resulting
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27 remedial action for a release or threatened release.

28 (7) Any person who is not a liable party under the federal Comprehensive Environmental Response,
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30 Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance

1 in response to an emergency situation associated with an incident may file a civil action against the
2 responsible party for recoverable costs that have not been reimbursed by the state.

3 (8) Recoveries by the state for reimbursed costs under this section must be deposited in the
4 environmental contingency account to offset amounts paid as reimbursement.

5 (9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full
6 cost associated with an incident and the cost of collection described in this section, the state shall recover
7 from the city or county having authority where the incident occurred an amount equal to 25% of the total
8 cost identified pursuant to [sections 1 through 14].

9 (b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible
10 amount must be equally divided among the jurisdictions.

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12 **NEW SECTION. Section 13. Liability of persons and response team members rendering assistance.**

13 The commission and the state hazardous material incident response team are not liable under [sections 1
14 through 14] for injuries, costs, damages, expenses, or other liabilities resulting from the release or
15 threatened release of a hazardous material. The immunity includes but is not limited to indemnification,
16 contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property,
17 or economic loss. A person becomes a member of the state hazardous material incident response team
18 when the person is contacted for response regardless of the person's location.

19

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21 agent of the owner of a hazardous material involved in an incident, a person causing an incident, a person
22 transporting a hazardous material involved in an incident, and a person owning or occupying property
23 involved in an incident shall assist the state as requested by the incident commander in responding to an
24 emergency situation associated with the incident as may be necessary to address an acute threat to public
25 health or safety or to the environment until the incident commander declares that the emergency situation
26 is over.

27
28 **Section 15.** Section 75-1-1101, MCA, is amended to read:

29 "75-1-1101. **Environmental contingency account objectives.** (1) There is created an environmental
30 contingency account within the state special revenue fund established in 17-2-102. The environmental

1 contingency account is controlled by the governor.

2 (2) At the beginning of each biennium, \$175,000 must be allocated to the environmental
3 contingency account from the interest income of the resource indemnity trust fund with the following
4 exceptions:

5 (a) if at the beginning of any biennium the unobligated cash balance in the environmental
6 contingency account equals or exceeds \$750,000, ~~no~~ allocation will not be made; and

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8 contingency account is less than \$750,000, then an amount less than or equal to the difference between
9 the unobligated cash balance and \$750,000, but not to exceed \$175,000, must be allocated to the
10 environmental contingency account from the interest income of the resource indemnity trust fund.

11 (3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental
12 contingency account upon the authorization of the governor to meet unanticipated public needs consistent
13 with the following objectives:

14 (a) to support renewable resource development projects in communities that face an emergency
15 or imminent need for the services or to prevent the physical failure of a project;

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17 physical threat or during an emergency, not including:

18 (i) natural disasters adequately covered by other funding sources; or

19 (ii) fire;

20 (c) to respond to an emergency or imminent threat to persons, property, or the environment caused
21 by mineral development; ~~and~~

22 (d) to respond to an emergency or imminent threat to persons, property, or the environment caused
23 by a hazardous material; and

24 ~~(e)~~ (e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other
25 necessary actions, including the construction of facilities, to respond to actual or potential threats to
26 persons, property, or the environment caused by hazardous wastes or other hazardous materials.

27 (4) Interest from funds in the environmental contingency account accrues to the resource indemnity
28 trust interest account.

29 (5) The governor shall submit, as a part of the information required by 17-7-111, a complete
30 financial report on the environmental contingency account, including a description of all expenditures made

1 since the preceding report."
2

3 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through 14] are intended to be
4 codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to
5 [sections 1 through 14].
6

7 **NEW SECTION. Section 17. Two-thirds vote required.** Because [section 14] limits governmental
8 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
9 each house of the legislature for passage.
10

11 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.
15

16 **NEW SECTION. Section 19. Effective date.** [This act] is effective on passage and approval.
17

-END-

1 HOUSE BILL NO. 461
2 INTRODUCED BY RYAN, HARPER, BURNETT, PECK, ORR, SCHWINDEN, KEENAN, SWANSON,
3 MERCER, M. HANSON, BROWN, JACOBSON, DEVLIN, GRINDE, FOSTER, STANG, HERTEL, GAGE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO
6 HAZARDOUS MATERIAL INCIDENTS ACT; AMENDING SECTION 75-1-1101, MCA; AND PROVIDING AN
7 IMMEDIATE EFFECTIVE DATE."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana
12 Response to Hazardous Material Incidents Act".

13
14 NEW SECTION. **Section 2. Purpose.** It is the purpose of [sections 1 through 14] to:

15 (1) provide that adequate hazardous material emergency response capability exists in the state in
16 order to protect the health and safety of Montana citizens and the environment;

17 (2) delineate those state agencies responsible for responding to a hazardous material incident;

18 (3) provide for the control and management of incidents;

19 (4) provide for the cooperation of other state agencies and local governments in incident
20 management; and

21 (5) provide for the formulation of a comprehensive, statewide incident management and hazardous
22 material response support plan.

23
24 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 14], the following
25 definitions apply:

26 (1) "Commission" means the state emergency response commission.

27 (2) "Division" means the division of disaster and emergency services in the department of military
28 affairs.

29 (3) "Duration of response" means a period of time beginning when a emergency responder is
30 requested by the appropriate authority to respond to an incident and ending when the responder is released

1 from the incident by the incident commander and returned to the emergency responder's place of residence
2 by the most direct route and includes the time required to replace and return all materials used for the
3 incident to the same or similar condition and state of readiness as before the response.

4 (4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as
5 defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or
6 deleterious substance, and radioactive material.

7 (5) "Hazardous material incident response team" means an organized group of trained response
8 personnel, operating under an emergency response plan and appropriate standard operating procedures,
9 that is expected to perform work to control an actual release or threatened release of hazardous material
10 requiring close approach to the material, to respond to releases or threatened releases of hazardous material
11 for the purpose of control or stabilization of the incident, and to provide technical assistance to local
12 jurisdictions.

13 (6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons;
14 explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

15 (b) The term does not include radioactive material.

16 (7) "Incident" means an event involving the release or threat of release involving hazardous material
17 that may cause injury to persons, the environment, or property.

18 (8) "Local emergency operations plan" means the local and interjurisdictional disaster and
19 emergency plan developed pursuant to 10-3-401.

20 (9) "Local emergency response authority" means the person or persons designated by the city,
21 county, or commission to be responsible for the management of an incident at the local level.

22 (10) "Orphaned hazardous material" means hazardous material of which the owner cannot be
23 identified.

24 (11) "Plan" means the Montana incident management and hazardous material response support
25 plan.

26 (12) (a) "Radioactive material" means any material or combination of material that spontaneously
27 emits ionizing radiation.

28 (b) The term does not include material in which the specific activity is not greater than 0.002
29 microcuries per gram of material unless the material is determined to be radioactive by the U.S.
30 environmental protection agency or the U.S. occupational safety and health administration.

1 (13) "State hazardous material incident response team" means persons who are designated as state
2 employees by the commission while they are engaged in activities as provided for in [section 4] and may
3 include members of the commission and local and state government responders.

4 (14) "Threat of release" or "threatened release" means an indication of the possibility of the release
5 of a hazardous material into the environment.

6
7 **NEW SECTION. Section 4. State emergency response commission.** (1) There is a state
8 emergency response commission that is attached to the department for administrative purposes. The
9 commission must consist of 20 members appointed by the governor. The commission must include
10 representatives of the national guard, air force, state and local fire organizations, state and local emergency
11 medical responders, state and local law enforcement agencies, local emergency planning committees, a
12 Montana utility company, and a railroad company doing business in the state, representatives from the
13 department of health and environmental sciences, the division, the department of transportation, the
14 department of administration, the department of justice, the department of fish, wildlife, and parks, and the
15 office of the governor, and any other representatives that the governor appoints. The members shall serve
16 without compensation. The governor shall appoint a presiding officer from the appointees.

17 (2) The commission shall implement the provisions of [sections 1 through 14], and in so doing, the
18 commission may create and implement a state hazardous material incident response team to respond to
19 incidents. The members of the team must be certified in accordance with the plan.

20 (3) The commission may enter into written agreements with each entity or person providing
21 equipment or services to the state hazardous material incident response team.

22 (4) The commission or its designee may direct that the state hazardous material incident response
23 team be available and respond, when requested by a local emergency response authority, to incidents
24 according to the plan.

25 (5) The commission may contract with persons to meet state emergency response needs for the
26 state hazardous material incident response team.

27 (6) The commission may advise, consult, cooperate, and enter into agreements with agencies of
28 the state and federal government, other states and their state agencies, cities, counties, tribal governments,
29 and other persons concerned with emergency response and matters relating to and arising out of incidents.

30 (7) The commission may encourage, participate in, or conduct studies, investigations, training,

1 research, and demonstrations for and with the state hazardous material incident response team, local
2 emergency responders, and other interested persons.

3 (8) The commission may collect and disseminate information relating to emergency response to
4 incidents.

5 (9) The commission may accept and administer grants, gifts, or other funds, conditional or
6 otherwise, made to the state for emergency response activities provided for in [sections 1 through 14].

7 (10) The commission may prepare, coordinate, implement, and update a plan, which coordinates
8 state and local emergency authorities, to respond to incidents within the state. The plan must be consistent
9 with [sections 1 through 14]. All state emergency response responsibilities relating to an incident must be
10 defined by the plan.

11 (11) The commission has the powers and duties of a state emergency response commission under
12 the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq.,
13 except that the division shall oversee the creation, annual local review, and exercise and revision of the
14 local emergency operations plan as provided by state law.

15 (12) The commission shall promulgate rules and procedures limited to cost recovery procedures,
16 certification of state response team members, and deployment of the state hazardous material incident
17 response team, which must be a part of the plan.

18 (13) All state agencies and institutions shall cooperate with the commission in the commission's
19 efforts to carry out its duties under [sections 1 through 14].

20

21 **NEW SECTION. Section 5. Commission budget and expenditures.** (1) The commission shall
22 submit its budget to the division.

23 (2) The commission shall expend any funds appropriated to it in the following priority:

24 (a) payment of workers' compensation premiums for coverage of state hazardous material incident
25 response team members;

26 (b) training activities for the state hazardous material incident response team;

27 (c) equal payments to each hazardous material incident response team as compensation for duties
28 established in the plan; and

29 (d) any remaining funds to be used at the discretion of the commission for programs related to the
30 plan.

1 **NEW SECTION. Section 6. Local emergency response authorities -- designation.** (1) The
2 governing body of each incorporated city and county shall designate the local emergency response authority
3 for incidents that occur within its jurisdiction.

4 (2) Local emergency response authority members must be trained in hazardous material incident
5 response in compliance with 29 CFR 1910.120(q), as amended.

6 (3) An incorporated city may, with the mutual consent of the county, designate the county as its
7 local emergency response authority and participate in the local emergency operations plan for incident
8 response.

9 (4) If an incident occurs in an area in which local emergency response authority has not been
10 designated, the presiding officer of the board of county commissioners must be the local emergency
11 response authority for the incident for the purposes of [sections 1 through 14].

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14 local emergency response authority designated pursuant to [sections 1 through 14] shall respond to
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16 emergency response authority shall also respond to an incident that initially occurs within its jurisdiction
17 but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an
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12 must be deposited in the environmental contingency account provided for in 75-1-1101.

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23 with a request by the state hazardous material incident response team or the commission.

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25 termination of the response to the incident for the state's determination of payment, if any.

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2

3 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through 14] are intended to be
4 codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to
5 [sections 1 through 14].

6

7 **NEW SECTION. Section 17. Two-thirds vote required.** Because [section 14] limits governmental
8 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
9 each house of the legislature for passage.

10

11 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.

15

16 **NEW SECTION. Section 19. Effective date.** [This act] is effective on passage and approval.

17

-END-