

WORKING DRAFT

HOUSE BILL NO. _____

Emergency Response Act.

Sponsored by: Joint Transportation and Highways Interim
Committee

A BILL

for

1 AN ACT relating to public health and safety; creating the
2 Emergency Response Act; creating an advisory board;
3 providing procedures for the response to the release of
4 hazardous materials or a weapons of mass destruction
5 incident as specified; establishing regional response
6 teams; providing for liability for a released hazardous
7 material; providing for recovery of expenses incurred in
8 responding to hazardous material and weapons of mass
9 destruction incidents; providing for mediation; providing
10 exceptions; granting rule making authority; providing an
11 appropriation; and providing for an effective date.

12

13 *Be It Enacted by the Legislature of the State of Wyoming:*

14

1 **Section 1.** W.S. 35-9-151 through 35-9-159 are created
2 to read:

3

4

Division 5

5

Emergency Response Act

6

7

35-9-151. Short title.

8

9 This act shall be known and may be cited as the "Wyoming
10 Emergency Response Act".

11

12 **35-9-152. Definitions.**

13

14 (a) As used in this act:

15

16 (i) "Emergency responders" means public, state or
17 federal fire services, law enforcement, emergency medical
18 services, public health, public works, emergency management
19 and other public response services or agencies that would
20 be involved in direct actions to contain or control a
21 hazardous material release or weapons of mass destruction
22 incident. The term "emergency responders" does not include
23 private on-site facilities with immediate emergency
24 response capabilities unless formally requested to assist

1 off of the private facility site by the state or a
2 political subdivision of the state;

3

4 (ii) "Emergency response" means a response to any
5 occurrence including a weapon of mass destruction incident,
6 which has or may result in a release of a hazardous
7 material;

8

9 (iii) "Hazardous material" means any substance,
10 material, waste or mixture designated as hazardous
11 material, waste or substance as defined in 49 C.F.R. part
12 171.8, as amended as of April 1, 2004;

13

14 (iv) "Incident" means the release, or imminent threat
15 of release, of a hazardous material, or a situation
16 involving a potential weapon of mass destruction that
17 requires the emergency action of responders to limit or
18 prevent damage to life or property;

19

20 (v) "Incident commander" means the person in charge
21 of all responders at the site of an emergency response;

22

1 (vi) "Local response authority" means the single
2 point of contact designated for a political subdivision for
3 coordinating responses to incidents;

4

5 (vii) "Political subdivision" means any county, city,
6 town or fire protection district of the state;

7

8 (viii) "Regional Response Team" means any group of
9 local government emergency responders brought together and
10 supported by the state and confirmed by the state fire
11 marshal to assist an affected jurisdiction within the
12 different regions of the state with the intent to protect
13 life and property against the dangers of incidents and
14 emergencies involving hazardous materials or weapons of
15 mass destruction.

16

17 (ix) "Person" means an individual, firm, co-
18 partnership, corporation, company, association, or joint-
19 stock association, including any trustee, receiver,
20 assignee, or similar representative, or a government or
21 Indian tribe, or an agency or instrumentality of any
22 government or Indian tribe, that transports a hazardous
23 material to further a commercial enterprise or offers a

1 hazardous material for transportation in commerce. Person
2 does not include the following:

3

4 (A) The United States Postal Service;

5

6 (B) Any government or Indian tribe, or an
7 agency or instrumentality of any government or Indian
8 tribe, that transports hazardous material for a
9 governmental purpose;

10

11 (x) "Homeland security director " means as defined in
12 W.S. 19-13-102(a)(v);

13

14 (xi) "State fire marshal" means as defined in W.S.
15 35-9-104;

16

17 (xii) "Unified command" means a system of command
18 that allows all parties with jurisdictional or functional
19 responsibility for the incident to work together to develop
20 a common set of incident objectives and strategies, share
21 information, maximize the utilization of available
22 resources, and enhance the efficiency of the individual
23 response organizations.

24

1 (xiii) "Weapons of mass destruction" means as defined
2 in 18 U.S.C. 2332(a) as of April 1, 2004;

3

4 (xiv) "This act" means W.S. 35-9-151 through 35-9-159.

5

6 **35-9-153. Advisory board; creation; duties.**

7

8 (a) There is created a hazardous material or weapons
9 of mass destruction emergency response advisory board that
10 shall consist of nine (9) members appointed by the governor
11 to advise the state fire marshal with respect to activities
12 under this act. The board shall consist of one (1) member
13 each representing the mining, trucking, manufacturing and
14 railroad industries, the fire service, law enforcement and
15 the political subdivisions, the state fire marshal, and the
16 homeland security director. The governor may remove any
17 member as provided in W.S. 9-1-202.

18

19 (b) The advisory board shall appoint a chairman from
20 among its members. The board shall meet at least annually
21 and may meet more often as deemed necessary by a majority
22 of the board or the state fire marshal and homeland
23 security director. Board members shall be reimbursed for

1 per diem and mileage for attending board meetings in the
2 same manner and amount as state employees.

3

4 (c) The governor shall give consideration to the
5 geographical location of the board members in order to have
6 equitable representation of the geographical areas of the
7 state.

8

9 (d) The advisory board shall review collection and
10 disbursement of funds and advise the state fire marshal and
11 homeland security director on activities and
12 responsibilities under this act.

13

14 **35-9-154. Emergency response training, planning and**
15 **reporting.**

16

17 (a) After consultation with the advisory board, the
18 state fire marshal and homeland security director shall:

19

20 (i) Coordinate, develop, implement and make
21 available a comprehensive voluntary training program
22 designed to assist emergency responders in hazardous
23 material or weapons of mass destruction incidents;

24

1 (ii) Provide for ongoing training programs for
2 political subdivisions, state agency employees and private
3 industry employees involved in responding to such hazardous
4 materials or weapons of mass destruction incidents.

5

6 (iv) Assist with emergency response planning by
7 appropriate agencies of government at the local, state and
8 national levels.

9

10 **35-9-155. Regional response teams; rule making.**

11

12 (a) The state, political subdivisions of the state and
13 other units of local government, may contract or coordinate
14 to make available for use in any county, city or fire
15 protection district any part of a regional response team of
16 appropriately trained personnel and specialized equipment
17 necessary to respond to an incident or emergency.

18

19 (b) Members of the regional response teams shall be
20 indemnified and defended from liability by the state self-
21 insurance program:

22

1 (i) While engaged in response to incidents
2 outside their normal jurisdiction and pursuant to an
3 appropriate request for assistance; or

4

5 (ii) While traveling to or from an operation
6 authorized by this act.

7

8 (c) The state may lend equipment and personnel and
9 make grants from available state or federal funds for the
10 purchase of equipment to any local government participating
11 in the regional response program.

12

13 (d) The state fire marshal, in consultation with the
14 homeland security director, shall:

15

16 (i) Promulgate rules and regulations
17 establishing:

18

19 (A) Standards for regional response teams;

20

21 (B) Hazardous material emergency response
22 training confirmation;

23

1 (C) Local and regional hazardous materials
2 or weapons of mass destruction incident response reporting.

3

4 (ii) Establish criteria for providing aid to regional
5 response teams.

6

7 **35-9-156. Local response authority.**

8

9 (a) Every political subdivision of the state shall
10 designate a local response authority for responding to and
11 reporting of hazardous material or weapons of mass
12 destruction incidents that occur within its jurisdiction.
13 The designation of a local response authority and copies of
14 any accompanying agreements and other pertinent
15 documentation created pursuant to this section shall be
16 filed with the state fire marshal within seven (7) days of
17 the agreement being reduced to writing and signed by all
18 appropriate persons.

19

20 (b) Every local response authority shall coordinate
21 the response to an incident occurring within its
22 jurisdiction in a fashion consistent with standard incident
23 command protocols. The local response authority shall also
24 coordinate the response to an incident which initially

1 occurs within its jurisdiction but which spreads to another
2 jurisdiction. If an incident occurs on a boundary between
3 two (2) jurisdictions or in an area not readily
4 ascertainable, the first local response authority arriving
5 at the scene shall coordinate the initial emergency
6 response and shall be responsible for seeking reimbursement
7 for the incident on behalf of all responding authorities
8 entitled to reimbursement under W.S. 35-9-157(a).

9
10 (c) Any unusual incident involving hazardous
11 materials or weapons of mass destruction shall be
12 investigated to determine if a criminal act has occurred
13 until it is determined otherwise. To ensure preservation
14 of evidence while mitigating the threat to life and
15 property a unified command structure shall be implemented.

16
17 (d) The incident commander shall declare an incident
18 ended when he has determined the threat to public health
19 and safety has ended.

20
21 **35-9-157. Right to claim reimbursement.**

22

1 (a) The state, political subdivision of the state or
2 other unit of local government is hereby given the right to
3 claim reimbursement for the costs resulting from action
4 taken to remove, contain or otherwise mitigate the effects
5 of a hazardous materials abandonment, a hazardous materials
6 spill or a weapons of mass destruction incident.

7

8 (b) Notwithstanding subsection (a) of this section,
9 no person shall be liable under this act if the incident
10 was caused by:

11

12 (i) An act of God; or

13

14 (ii) An act or omission of a person not defined
15 as a person under this act, provided that:

16

17 (A) The potentially liable person exercised
18 reasonable care with respect to the hazardous material
19 involved, taking into consideration the characteristics of
20 the hazardous material in light of all relevant facts and
21 circumstances; and

22

1 (B) The potentially liable person took
2 reasonable precautions against foreseeable acts or
3 omissions of any third person and the consequences that
4 could foreseeably result from such acts or omissions.

5

6 (c) Local response authorities and regional response
7 teams shall be entitled to recover their reasonable and
8 necessary costs incurred as a result of their response to a
9 hazardous material or weapons of mass destruction incident.
10 Costs subject to recovery under this act include, but are
11 not limited to, the following:

12

13 (i) Disposable materials and supplies acquired,
14 consumed and expended specifically for the purpose of the
15 response;

16

17 (ii) Remuneration of employees for the time and
18 efforts devoted to responding to a hazardous materials or
19 weapons of mass destruction incident outside the
20 responders' normal jurisdiction;

21

22 (iii) A reasonable fee, as established through
23 rules and regulations of the state fire marshal, for the
24 use of equipment, including rolling stock, in responding to

1 a hazardous materials or weapons of mass destruction
2 incident outside the responders' normal jurisdiction;

3

4 (iv) Rental or leasing of equipment used
5 specifically for the response;

6

7 (v) At value replacement costs for equipment
8 owned by the person claiming reimbursement that is
9 contaminated beyond reuse or repair, if the loss occurred
10 as a result of the response;

11

12 (vi) Decontamination of equipment contaminated
13 during the response;

14

15 (vii) Special technical services specifically
16 requested and required for the response;

17

18 (viii) Medical monitoring or treatment of
19 response personnel; and

20

21 (ix) Laboratory expenses for analyzing samples
22 taken during the response.

23

1 (d) Nothing contained in this section shall be
2 construed to change or impair any right of recovery or
3 subrogation arising under any other provision of law.

4
5 **35-9-158. Expense recovery and civil remedies.**

6
7 (a) The decision to commence a civil action to recover
8 expenses shall be made by the state, political subdivision
9 of the state or other unit of local government in
10 consultation with the attorney general or county or
11 municipal attorney as appropriate.

12
13 (b) Prior to commencing a civil action for recovery
14 of expenses pursuant to this act, the governmental entity
15 shall afford the person alleged to owe those expenses a
16 reasonable opportunity to engage in nonbinding mediation.
17 Each party to mediation shall bear his own costs and
18 expenses, including a proportionate share of the fees of
19 the mediator.

20
21 (c) In the event that the attorney general or county
22 or municipal attorney prevails in a civil action for
23 reimbursement under this act, the court shall award costs

1 of collection including reasonable attorney's fees,
2 investigation expenses and litigation expenses.

3

4 (d) Any person who receives remuneration for the
5 emergency response expenses pursuant to any other federal
6 or state law shall be precluded from recovering
7 reimbursement for such expenses under this act. Nothing in
8 this act shall otherwise affect or modify in any way the
9 obligations or liability of any person under any other
10 provision of state or federal law, including common law,
11 for damages, injury or loss resulting from the release of
12 any hazardous material or for remedial action or the
13 expenses of remedial action for such release.

14

15 **35-9-159. Exceptions to reimbursements; exception to**
16 **act.**

17

18 (a) This act shall not apply to releases of a
19 hazardous material where there is an immediate on-site
20 private industry response capability to the emergency. The
21 exemption under this subsection shall apply only if the
22 private industry files evidence satisfactory to the local
23 response authority of its immediate response capability to
24 respond to emergency releases of hazardous materials that

1 may be present at the site of the private industry. The
 2 exemption shall not apply if emergency responders responded
 3 to a release of hazardous materials at the request of the
 4 on-site private industry where the emergency occurred.

5

6 (b) The state, political subdivision of the state or
 7 other unit of local government shall not be entitled to
 8 reimbursement under this act from any responsible party for
 9 an incident involving less than the following quantities of
 10 hazardous materials:

11

12

<u>Hazard type</u>	<u>Hazard</u> <u>Class</u>	<u>Quantity</u>
Explosives	1.1, 1.2	Any quantity
Explosives	1.3, 1.4, 1.5, 1.6	50 pounds
Gasses: Flammable gases, Toxic by inhalation	2.1 2.3	3,000 cubic feet or more at one (1) atmosphere at 70° F
Flammable liquids	3	700 pounds or 120 gallons

Combustible liquid class I	3	120 gallons
Combustible liquid class II	3	240 gallons
Combustible liquid class III	3	500 gallons
Flammable solids, Spontaneously combustible materials, Dangerous when wet materials	4.1 4.2 4.3	5 pounds
Oxidizers	5.1	200 pounds or 120 gallons
Organic or inorganic peroxide	5.2	50 pounds
Poison or toxic materials	6.1	100 pounds or 15 gallons
Etiological agent or Infectious substances	6.2	Any quantity
Radioactive materials	7	Any quantity

Corrosive material	8	200 pounds or 120 gallons
Miscellaneous dangerous goods	9	200 pounds or 120 gallons

1

2 (c) The initial response authority shall seek
3 reimbursement on behalf of all responders entitled to
4 reimbursement under this act from any responsible party for
5 an incident involving any amount of more than one (1) of
6 the quantities of hazardous materials specified in
7 subsection (b) of this section.

8

9 **Section 2.** W.S. 1-41-102(a)(v)(A) is amended to read:

10

11 **1-41-102. Definitions.**

12

13 (a) As used in this act:

14

15 (v) "Public employee" means any officer,
16 employee or servant of the state, provided the term:

17

18 (A) Includes elected or appointed
19 officials, peace officers, members of regional response
20 teams authorized under W.S. 35-9-155 and persons acting on

1 behalf or in service of the state in any official capacity,
2 whether with or without compensation, including volunteer
3 physicians providing medical services under W.S.
4 9-2-103(a)(iii);

5

6 **Section 3.** There is appropriated xx thousand dollars
7 (\$xx.00) from the general fund to the state fire marshal
8 for the period beginning April 1, 2004, and ending June 30,
9 2006, to implement the purposes of this act.

10

11 **Section 4.** This act is effective immediately upon
12 completion of all acts necessary for a bill to become law
13 as provided by Article 4, Section 8 of the Wyoming
14 Constitution.

15

16

(END)