

1 HOUSE BILL NO. 107

2 INTRODUCED BY B. BARKER

3 BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO EMERGENCY PREPAREDNESS  
6 AND RESPONSE; ALIGNING THE RESPONSIBILITIES OF THE STATE EMERGENCY RESPONSE  
7 COMMISSION WITH FEDERAL LAW; ASSIGNING CERTAIN RESPONSIBILITIES TO THE DIVISION OF  
8 DISASTER AND EMERGENCY SERVICES OF THE DEPARTMENT OF MILITARY AFFAIRS; REVISING THE  
9 FUNDING PRIORITIES OF THE STATE EMERGENCY RESPONSE COMMISSION; REVISING THE  
10 REQUIREMENTS OF THE STATE DISASTER AND EMERGENCY PLAN; AMENDING REFERENCES TO  
11 HAZARDOUS MATERIAL INCIDENT RESPONSE TEAMS; REVISING DEFINITIONS; EXTENDING  
12 RULEMAKING AUTHORITY; AND AMENDING SECTIONS 10-3-103, 10-3-105, 10-3-301, 10-3-310, 10-3-401,  
13 10-3-904, 10-3-1202, 10-3-1203, 10-3-1204, 10-3-1207, 10-3-1208, 10-3-1209, 10-3-1210, 10-3-1214, 10-3-  
14 1216, AND 10-3-1217, MCA."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17  
18 **Section 1.** Section 10-3-103, MCA, is amended to read:

19 **"10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

20 (1) "All-hazard incident management assistance team" means a team that includes any  
21 combination of personnel representing local, state, or tribal entities that has been established by the ~~state~~  
22 ~~emergency response commission provided for in 10-3-1204~~ division for the purpose of local incident  
23 management intended to mitigate the impacts of an incident prior to a disaster or emergency declaration.

24 (2) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and  
25 emergency services.

26 (3) "Department" means the department of military affairs.

27 (4) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or  
28 loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms,

1 snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic  
2 action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage,  
3 blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services,  
4 accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or  
5 incidents involving weapons of mass destruction.

6 (5) "Disaster and emergency services" means the preparation for and the carrying out of disaster  
7 and emergency functions and responsibilities, other than those for which military forces or other state or federal  
8 agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage  
9 resulting from emergencies or disasters.

10 (6) "Disaster medicine" means the provision of patient care by a health care provider during a  
11 disaster or emergency when the number of patients exceeds the capacity of normal medical resources,  
12 facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from  
13 recognized nondisaster triage and standard treatment patient care guidelines determining the order of  
14 evacuation and treatment of persons needing care.

15 (7) "Division" means the division of disaster and emergency services of the department.

16 (8) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property  
17 that timely action can avert or minimize.

18 (9) (a) "Incident" means an event or occurrence, caused by either an individual or by natural  
19 phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life  
20 or damage to property or natural resources. The term includes the imminent threat of an emergency.

21 (b) The term does not include a state of emergency or disaster declared by the governor pursuant  
22 to 10-3-303.

23 (10) "Political subdivision" means any county, city, town, or other legally constituted unit of local  
24 government in this state.

25 (11) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or  
26 other chief executive officer of a political subdivision.

27 (12) "Religious organization" means:

28 (a) a house of worship, including but not limited to churches, mosques, shrines, synagogues, and

1 temples; or

2 (b) a religious group, association, educational institution, ministry, order, society, or similar entity,  
3 regardless of whether it is integrated or affiliated with a house of worship.

4 (13) "Religious services" means a meeting, gathering, or assembly of multiple persons organized by  
5 a religious organization for the purpose of worship, teaching, training, providing educational services,  
6 conducting religious rituals, or other activities that involve the exercise of religion.

7 (14) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile  
8 homes, or other readily fabricated dwellings.

9 (15) "Tribal government" means the government of a federally recognized Indian tribe within the  
10 state of Montana.

11 (16) "Volunteer professional" means an individual with an active, unrestricted license to practice a  
12 profession under the provisions of Title 37, Title 50, or the laws of another state."

13

14 **Section 2.** Section 10-3-105, MCA, is amended to read:

15 **"10-3-105. Division of disaster and emergency services -- duties.** (1) A division of disaster and  
16 emergency services is established in the department. The division must have an administrator and other  
17 professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

18 (2) The department through the division of disaster and emergency services is responsible to the  
19 governor for carrying out the planning and program for disaster and emergency services of this state.

20 (3) The division shall prepare and maintain a comprehensive plan and program for disaster and  
21 emergency services of this state. The plan and program must be coordinated with the disaster and emergency  
22 plans and programs of the federal government, other states, political subdivisions, tribal governments, and  
23 Canada to the fullest extent possible.

24 (4) The division shall:

25 (a) coordinate the preparation of the plan and program for disaster and emergency services with  
26 the political subdivisions of this state;

27 (b) coordinate disaster and emergency prevention and preparation activities of all departments,  
28 agencies, and organizations within the state;

1 (c) advise and assist the political subdivisions of this state in executing their disaster and  
2 emergency services responsibilities;

3 (d) make recommendations on the formation of interjurisdictional disaster and emergency services  
4 areas when individual political subdivisions are unable to fully and adequately mount an effective local program  
5 because of limitations of funding, personnel, or other reasons;

6 (e) make surveys of industries, resources, and facilities within the state, both public and private, as  
7 are necessary to carry out the purposes of parts 1 through 4 of this chapter;

8 (f) periodically review local and interjurisdictional plans and programs for disaster and emergency  
9 services;

10 (g) develop or assist in the development of mutual aid plans and agreements between the federal  
11 government, other states, tribal governments, and Canada and among the political subdivisions of this state;

12 (h) plan and make arrangements for the availability and use of any private facilities, services, and  
13 property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed  
14 upon;

15 (i) institute training and public information programs and take all other preparatory steps, including  
16 the partial or full mobilization of disaster and emergency services organizations in advance of an actual  
17 incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time  
18 of an incident, emergency, or disaster;

19 (j) direct emergency response and disaster preparation activities as authorized by the governor;

20 (k) direct disaster response and recovery activities as authorized by the governor;

21 (l) prepare, for issuance by the governor, executive orders or proclamations as necessary or  
22 appropriate in coping with incidents, emergencies, and disasters;

23 (m) maintain liaison with and cooperate with disaster and emergency services agencies and  
24 organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through  
25 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery;  
26 ~~and~~

27 (n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of  
28 this chapter as may be prescribed by the governor;

- 1           (o) establish all-hazard incident management assistance teams; and
- 2           (p) appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904."

3

4           **Section 3.** Section 10-3-301, MCA, is amended to read:

5           **"10-3-301. State disaster and emergency plan.** (1) The state disaster and emergency plan and  
6 program may provide for:

- 7           (a) prevention and minimization of injury and damage caused by disaster;
- 8           (b) prompt and efficient response to an incident, emergency, or disaster;
- 9           (c) emergency relief;
- 10          (d) identification of areas particularly vulnerable to disasters;
- 11          (e) recommendations for preventive and preparedness measures designed to eliminate or reduce  
12 disasters or their impact;
- 13          (f) organization of personnel and chains of command;
- 14          (g) coordination of federal, state, and local disaster and emergency activities; and
- 15          (h) other necessary matters.

16          ~~(2) The state disaster and emergency plan and program may not:~~

17          ~~(a) compel a private business to deny a customer of the private business access to the premises or~~  
18 ~~access to goods or services; or~~

19          ~~(b) deny a customer of a private business the ability to access goods or services provided by the~~  
20 ~~private business.~~

21          ~~(3) The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a~~  
22 ~~communicable disease and who are currently under a public quarantine order.~~

23          (2) THE STATE DISASTER AND EMERGENCY PLAN AND PROGRAM MAY NOT:

24          (A) COMPEL A PRIVATE BUSINESS TO DENY A CUSTOMER OF THE PRIVATE BUSINESS ACCESS TO THE  
25 PREMISES OR ACCESS TO GOODS OR SERVICES; OR

26          (B) DENY A CUSTOMER OF A PRIVATE BUSINESS THE ABILITY TO ACCESS GOODS OR SERVICES PROVIDED  
27 BY THE PRIVATE BUSINESS.

28          (3) THE PROHIBITION PROVIDED FOR IN SUBSECTION (2)(B) DOES NOT APPLY TO PERSONS CONFIRMED TO

1 HAVE A COMMUNICABLE DISEASE AND WHO ARE CURRENTLY UNDER A PUBLIC QUARANTINE ORDER.

2 ~~(4)(2)(4)~~ In preparing and maintaining the state disaster and emergency plan and program, the  
3 division ~~may~~ SHALL seek the advice and assistance of local government, business, labor, industry, agriculture,  
4 civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the  
5 division may encourage them to seek advice from these sources.

6 ~~(5) As used in this section, "private business" means an individual or entity that is not principally a part~~  
7 ~~of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a~~  
8 ~~corporation, a sole proprietorship, or a limited liability company.~~

9 (5) AS USED IN THIS SECTION, "PRIVATE BUSINESS" MEANS AN INDIVIDUAL OR ENTITY THAT IS NOT  
10 PRINCIPALLY A PART OF OR ASSOCIATED WITH A GOVERNMENT UNIT. THE TERM INCLUDES BUT IS NOT LIMITED TO A  
11 NONPROFIT OR FOR-PROFIT ENTITY, A CORPORATION, A SOLE PROPRIETORSHIP, OR A LIMITED LIABILITY COMPANY."

12

13 **Section 4.** Section 10-3-310, MCA, is amended to read:

14 **"10-3-310. Incident response -- authority -- appropriation -- expenditures -- recovery -- rules. (1)**

15 The governor may by executive order upon request of the local governing body, its authorized agent, or a tribal  
16 government activate that part of the state disaster and emergency plan pertaining to incident response. The  
17 order may be issued for any year, for any part of a year, or upon occurrence of an incident.

18 (2) Upon approval of an executive order pursuant to this section:

19 (a) that part of the state disaster and emergency plan pertaining to incidents becomes effective;

20 (b) the division may use any of the resources usable by the division during a state of emergency or  
21 disaster to respond to the incident; and

22 (c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor and the  
23 governor is authorized to expend from the general fund an amount not to exceed \$10,000 per incident and not  
24 to exceed \$100,000 for incidents in a biennium.

25 (3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims  
26 against the state from the general fund, in the amount necessary, upon activation of the incident response  
27 portion of the state disaster and emergency plan. Money appropriated by this section may be used only for  
28 incident response costs of the state and incident response costs incurred by an all-hazard incident

1 management assistance team established under ~~40-3-1204~~ 10-3-103.

2 (4) In the event of recovery of money expended pursuant to this section, the spending authority  
3 must be reinstated to the level reflecting the recovery.

4 (5) The department may adopt rules to implement this section."  
5

6 **Section 5.** Section 10-3-401, MCA, is amended to read:

7 **"10-3-401. Local and interjurisdictional disaster and emergency plan -- distribution.** (1) Each  
8 political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional  
9 disaster and emergency plan and program covering the area for which that political subdivision is responsible.  
10 This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

11 (2) The political subdivision shall prepare and distribute on behalf of the principal executive  
12 officers, in written form, a clear and complete statement of:

13 (a) the emergency responsibilities of all local agencies, if any, and officials;

14 (b) the disaster and emergency chain of command;

15 (c) local evacuation authority and responsibility; and

16 (d) local authority and responsibility for control of ingress and egress to and from an emergency or  
17 disaster area.

18 (3) The political subdivision of each local emergency planning district as established in 10-3-  
19 1204(11) shall prepare and distribute on behalf of the principal executive officer a hazardous material  
20 emergency response plan that provides for the plan provisions in the federal Emergency Planning and  
21 Community Right-to-Know Act of 1986, 42 U.S.C. 11003, et seq. Each emergency plan must include but is not  
22 limited to:

23 (a) (i) the identification of facilities subject to the requirements of the federal act within the  
24 emergency planning district;

25 (ii) the identification of routes likely to be used for the transportation of substances on the list of  
26 extremely hazardous substances referred to in 42 U.S.C. 11002(a); and

27 (iii) the identification of additional facilities contributing to or subjected to additional risk due to their  
28 proximity to facilities subject to the requirements of the federal act, such as hospitals or natural gas facilities;

1           **(b)** the methods and procedures that facility owners and operators and local emergency response  
2 and medical personnel shall follow to respond to the release of extremely hazardous substances;

3           **(c)** the designation of a community emergency coordinator and facility emergency coordinators  
4 who shall make determinations necessary to implement the plan;

5           **(d)** procedures for providing reliable, effective, and timely notification by the community emergency  
6 coordinator and the facility emergency coordinators to persons designated in the emergency plan and to the  
7 public that a release has occurred, consistent with the emergency notification requirements of 42 U.S.C. 11004;

8           **(e)** the methods for determining the occurrence of a release and the area or population likely to be  
9 affected by the release;

10           **(f)** a description of emergency equipment and facilities in the community and at each facility in the  
11 community subject to the requirements of this part and an identification of the persons responsible for the  
12 equipment and facilities;

13           **(g)** evacuation plans, including provisions for a precautionary evacuation and alternative traffic  
14 routes;

15           **(h)** training programs, including schedules for the training of local emergency response and  
16 medical personnel; and

17           **(i)** the methods and schedules for exercising the emergency plan.

18           **(4)** After completion of the hazardous material emergency response plan, the local emergency  
19 planning committee shall submit a copy of the plan to the state emergency response commission."

20

21           **Section 6.** Section 10-3-904, MCA, is amended to read:

22           **"10-3-904. Montana intrastate mutual aid committee -- members -- officers -- meetings --**

23 **compensation.** (1) There is a Montana intrastate mutual aid committee.

24           (2) All members of the committee must be appointed by and serve at the pleasure of the ~~state~~  
25 ~~emergency response commission established in 10-3-1204~~ division as established in 10-3-105.

26           (3) The committee shall elect from among its members a presiding officer, a vice presiding officer,  
27 and any other officers considered necessary or advisable by the committee.

28           (4) The committee shall meet at least annually and may meet at the call of the presiding officer or



1 as otherwise considered necessary or advisable by two-thirds of the members.

2 (5) Members of the committee are not entitled to compensation or to reimbursement for expenses  
3 incurred for serving on or participating in the activities of the committee. This subsection does not preclude a  
4 member jurisdiction from compensating or reimbursing the expenses of a committee member."

5

6 **Section 7.** Section 10-3-1202, MCA, is amended to read:

7 **"10-3-1202. Purpose.** It is the purpose of this part to:

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

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

11 (3) provide for the control and management of hazardous material incidents;

12 (4) provide for the cooperation of other state agencies and local governments in hazardous  
13 material incident management; and

14 (5) provide for the formulation of a comprehensive, ~~statewide incident management and~~ hazardous  
15 material response support plan."

16

17 **Section 8.** Section 10-3-1203, MCA, is amended to read:

18 **"10-3-1203. Definitions.** As used in this part, the following definitions apply:

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

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

22 (3) "Duration of response" means a period of time beginning when an emergency responder is  
23 requested by the appropriate authority to respond to an incident and ending when the responder is released  
24 from the incident by the incident commander and returned to the emergency responder's place of residence by  
25 the most direct route and includes the time required to replace and return all materials used for the incident to  
26 the same or similar condition and state of readiness as before the response.

27 (4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as  
28 defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or

1 deleterious substance, and radioactive material.

2 (5) "Hazardous material incident" means an event involving the release or threat of release  
3 involving hazardous material that may cause injury to persons, the environment, or property.

4 ~~(5)(6)~~ "Hazardous material incident response team" means an organized group of trained response  
5 personnel, operating under an emergency response plan and appropriate standard operating procedures, that  
6 is expected to perform work to control an actual release or threatened release of hazardous material requiring  
7 close approach to the material, to respond to releases or threatened releases of hazardous material for the  
8 purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

9 ~~(6)(7)~~ (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons;  
10 explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

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

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

14 (8) "Incident commander" means the person who is designated in the local emergency operations  
15 plan.

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

18 (10) "Local emergency response authority" means the agency designated by the city, or county, ~~or~~  
19 ~~commission~~ to be responsible for the management of an a hazardous material incident at the local level.

20 (11) "Plan" means the ~~Montana incident management and hazardous material response support~~  
21 plan.

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

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

27 ~~(13) "State hazardous material incident response team" means persons who are designated as state~~  
28 ~~employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may~~

1 ~~include members of the commission and local and state government responders.~~

2 ~~(14)(13)~~ "Threat of release" or "threatened release" means an indication of the possibility of the release  
3 of a hazardous material into the environment."  
4

5 **Section 9.** Section 10-3-1204, MCA, is amended to read:

6 **"10-3-1204. State emergency response commission -- members -- duties -- establishment of**  
7 **hazardous material incident response and hazardous material incident management teams.** (1) There is  
8 a state emergency response commission that is attached to the department for administrative purposes. The  
9 commission consists of ~~29~~ 5 ~~8~~ members appointed by the governor. The commission must include  
10 representatives of ~~the national guard, the air force, the department of environmental quality, the division, the~~  
11 ~~department of transportation, the department of justice, the department of natural resources and conservation,~~  
12 AND the department of public health and human services, ~~a fire service association, the fire services training~~  
13 ~~school, the emergency medical services and trauma systems section of the public health and safety division in~~  
14 ~~the department of public health and human services, the department of fish, wildlife, and parks, the department~~  
15 ~~of agriculture, Montana hospitals, an emergency medical services association, a law enforcement association,~~  
16 ~~an emergency management association, a public health-related association, a trucking association, a utility~~  
17 ~~company doing business in Montana, a railroad company doing business in Montana, Montana's petroleum~~  
18 ~~industry, Montana's insurance industry, the university system, a tribal emergency response commission, the~~  
19 ~~national weather service, the Montana association of counties, the Montana league of cities and towns, and the~~  
20 ~~office of the governor. At least one representative must be a member of a local emergency planning committee~~  
21 ~~and a person with local or tribal hazardous material emergency planning experience~~ A TRIBAL EMERGENCY  
22 RESPONSE COMMISSION MEMBER, AND THREE PEOPLE WITH HAZARDOUS MATERIAL EMERGENCY PLANNING EXPERIENCE.  
23 Members of the commission serve terms of 4 years and may be reappointed. The members shall serve without  
24 compensation. The governor shall appoint ~~two presiding officers from the appointees, who shall act as~~  
25 ~~copresiding officers~~ the presiding officer.

26 (2) The commission shall implement the provisions of this part. The commission may ~~create and~~  
27 ~~implement a state~~ approve regional hazardous material incident response ~~team~~ teams to respond to hazardous  
28 material incidents. The members of the team must be certified in accordance with the plan.

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

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

6           (5)     The commission may contract with persons to meet state emergency response needs for the  
7 ~~state~~ hazardous material incident response ~~team~~ teams.

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

11          (7)     The commission may encourage, participate in, or conduct studies, investigations, training,  
12 research, and demonstrations for and with the ~~state~~ hazardous material incident response ~~team~~ teams, local  
13 emergency responders, and other interested persons.

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

16          (9)     The commission may accept and administer grants, gifts, or other funds, conditional or  
17 otherwise, made to the state for emergency response activities provided for in this part.

18          (10)    The commission may prepare, coordinate, implement, and update a plan that coordinates state  
19 and local emergency response authorities to respond to hazardous material incidents within the state. The plan  
20 must be consistent with this part. All state emergency response responsibilities relating to ~~an~~ a hazardous  
21 material incident must be defined by the plan. The plan must be in accordance with and in support of the state  
22 disaster and emergency plan and program as provided in 10-3-301.

23          (11)    Except that the division shall designate local emergency planning districts and shall oversee  
24 the creation, annual local review, and exercise and revision of the local emergency operations plan as provided  
25 by state law. ~~The~~ the commission has the powers and duties of a state emergency response commission under  
26 the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq.,  
27 including:

28           (a)     establishing procedures for receiving and processing public requests for information collected

1 under the federal act;

2 (b) appointing local emergency planning committees for each district; and

3 (c) supervising the activities of the local emergency planning committees

4 ~~except that the division shall oversee the creation, annual local review, and exercise and revision of the~~  
5 ~~local emergency operations plan as provided by state law.~~

6 (12) The commission shall promulgate rules and procedures limited to cost recovery procedures,  
7 certification of ~~state-hazardous material incident response team members and all-hazard incident management~~  
8 ~~assistance team members~~, and deployment of the ~~state-hazardous material incident response team teams and~~  
9 ~~all-hazard incident management assistance teams~~, which must be a part of the plan.

10 ~~(13) The commission shall act as an all-hazard advisory board to the division by:~~

11 ~~(a) assisting the division in carrying out its responsibilities by providing the division with~~  
12 ~~recommendations on issues pertaining to all-hazard emergency management;~~

13 ~~(b) authorizing the establishment of subcommittees to develop and provide the recommendations~~  
14 ~~called for in subsection (13)(a); and~~

15 ~~(c) establishing all-hazard incident management assistance teams.~~

16 ~~(14) The commission shall appoint the members of the Montana intrastate mutual aid committee~~  
17 ~~provided for in 10-3-904.~~

18 ~~(15)~~(13) All state agencies and institutions shall cooperate with the commission in the commission's  
19 efforts to carry out its duties under this part."

20

21 **Section 10.** Section 10-3-1207, MCA, is amended to read:

22 **"10-3-1207. Commission budget and expenditures.** (1) The commission shall submit its budget to  
23 the division.

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

25 (a) reimbursement for the nonfederal cost share for approved projects for local emergency  
26 planning committee development, local hazardous material emergency response plan development, local  
27 hazardous material incident response teams, and regional hazardous material incident response teams under  
28 eligible federal grants~~payment of workers' compensation premiums for coverage of state hazardous material~~

1 incident response team members;  
2 (b) ~~training activities for the state hazardous material incident response team;~~  
3 (c) ~~equal payments to each hazardous material incident response team as compensation for duties~~  
4 ~~established in the plan;~~ and  
5 (d)(b) any remaining funds to be used at the discretion of the commission for programs related to the  
6 plan."  
7

8 **Section 11.** Section 10-3-1208, MCA, is amended to read:

9 **"10-3-1208. Local emergency response authorities -- designation.** (1) The governing body of each  
10 incorporated city and county shall designate the local emergency response authority for incidents that occur  
11 within its jurisdiction.

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

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

17 (4) If ~~an~~ a hazardous material incident occurs in an area in which local emergency response  
18 authority has not been designated, the presiding officer of the board of county commissioners must be the local  
19 emergency response authority for the incident for the purposes of this part."  
20

21 **Section 12.** Section 10-3-1209, MCA, is amended to read:

22 **"10-3-1209. Local emergency response authorities -- powers and duties.** (1) Every local  
23 emergency response authority designated pursuant to this part shall respond to hazardous material incidents  
24 occurring within its jurisdiction according to the local emergency operations plan. The local emergency  
25 response authority shall also respond to ~~an~~ a hazardous material incident that initially occurs within its  
26 jurisdiction but spreads to another jurisdiction. If ~~an~~ a hazardous material incident occurs on a boundary  
27 between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local  
28 emergency response authority to arrive at the scene of the hazardous material incident shall perform the initial

1 emergency response duties.

2 (2) Each local emergency response authority shall ~~define~~ identify in writing its incident  
3 management system and ~~specifically define the agency that~~ identify the individual who will be the incident  
4 commander.

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

8

9 **Section 13.** Section 10-3-1210, MCA, is amended to read:

10 **"10-3-1210. Controlling provisions for state of emergency -- liability of responsible persons.** In  
11 the event that a state of emergency is declared by proper authority pursuant to 10-3-303, as the result of ~~an a~~  
12 hazardous material incident, the provisions of 10-3-303 govern."

13

14 **Section 14.** Section 10-3-1214, MCA, is amended to read:

15 **"10-3-1214. Right to reimbursement.** (1) ~~State hazardous~~ Hazardous material incident response  
16 team members may submit claims to the commission for reimbursement of documented costs incurred as a  
17 result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of  
18 response.

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

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

24 (4) Reimbursement may be made only after the commission finds that the actions by the applicant  
25 were taken in response to an incident as defined in this part and only if adequate funds are available."

26

27 **Section 15.** Section 10-3-1216, MCA, is amended to read:

28 **"10-3-1216. Cost recovery and civil remedies.** (1) Cost recovery is the duty of the city or county

1 having authority where an incident occurred.

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

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

5 (4) The remedy for the recovery of emergency response costs identified in this part is in addition to  
6 any other remedy for recovery of the costs provided by applicable federal or state law.

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

9 (6) Except for the commission, the ~~state~~-regional hazardous material incident response team, and  
10 the local emergency response authority, this part does not otherwise affect or modify in any way the obligations  
11 or liability of any person under any other provision of state or federal law, including common law, for damages,  
12 injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action  
13 or the costs of remedial action for a release or threatened release.

14 (7) Any person who is not a liable party under the federal Comprehensive Environmental  
15 Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the  
16 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders  
17 assistance in response to an emergency situation associated with an incident may file a civil action against the  
18 responsible party for recoverable costs that have not been reimbursed by the state.

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

21

22 **Section 16.** Section 10-3-1217, MCA, is amended to read:

23 **"10-3-1217. Liability of persons and response team members rendering assistance.** (1) The  
24 following are not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from  
25 the release or threatened release or remedial action resulting from the release or threatened release of a  
26 hazardous material:

27 (a) the state or a political subdivision of the state;

28 (b) the commission;



- 1 (c) the local emergency response authority;
- 2 (d) the ~~state~~regional hazardous material incident response team;
- 3 (e) a private emergency response team dispatched by the state, a political subdivision of the state,  
4 or a local or tribal emergency response authority for emergency response activities; and
- 5 (f) an employee, representative, or agent of any of the entities listed in subsections (1)(a) through  
6 (1)(e), except for willful misconduct or gross negligence.
- 7 (2) The immunity includes but is not limited to indemnification, contribution, or third-party claims for  
8 wrongful death, personal injury, illness, loss or damages to property, or economic loss.
- 9 (3) A person becomes a member of the ~~state~~regional hazardous material incident response team  
10 when the person is contacted, dispatched, or requested for response regardless of the person's location."

11 - END -