

1991 Assembly Bill 535

Date of enactment: December 13, 1991  
Date of publication: January 2, 1992

## 1991 Wisconsin Act 104 (Vetoed in Part)

AN ACT *to repeal* 166.20 (2) (g); *to amend* 20.465 (3) (jm), 166.20 (7) (title), ~~166.20 (7) (d)~~ and 166.21 (2) (bm); *to repeal and recreate* 166.20 (1) (intro.); and *to create* 20.395 (4) (bh), 20.465 (3) (is), 20.465 (3) (jq) and (jt), 25.40 (1) (a) 8, 85.50, 166.20 (1) (fm), (ge) and (gi), 166.20 (7g), 166.21 (2m), 166.215 and 895.483 of the statutes, relating to emergency response to hazardous substance releases, hazardous substances emergency planning and training, granting rule-making authority and making appropriations. **Vetoed in Part**

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

20.395    **Transportation,  
          department of**  
(4)      **GENERAL TRANSPORTATION  
          OPERATIONS**

1991-92

1992-93

(bh)	Hazardous materials transportation fees	PR	B	152,300	103,300
<b>20.465</b>	<b>Military affairs, department of</b>				
(3)	EMERGENCY GOVERNMENT SERVICES				
(is)	Hazardous substance emergency response; administration	PR	A	-0-	57,600
(jq)	Regional emergency response teams	PR	C	-0-	1,400,000

SECTION 2. 20.395 (4) (bh) of the statutes is created to read:

20.395 (4) (bh) *Hazardous materials transportation fees.* Biennially, from the general fund, from the moneys received from the hazardous materials transportation registration fees established under s. 166.20 (7g) and collected under s. 85.50, the amounts in the schedule for the purpose of administering those fees.

SECTION 3. 20.465 (3) (is) of the statutes is created to read:

20.465 (3) (is) *Hazardous substance emergency response; administration.* From the moneys received from fees established under s. 166.20 (7g) and not appropriated under par. (jq) or s. 20.395 (4) (bh), the amounts in the schedule for hazardous substance emergency response activities under s. 166.215.

SECTION 4. 20.465 (3) (jm) of the statutes is amended to read:

20.465 (3) (jm) *State emergency response board; emergency planning grants.* All moneys received by the state emergency response board from fees assessed under s. 166.20 (7), except moneys appropriated under par. (i), and, after deducting the amounts appropriated under pars. (is) and (jq) and s. 20.395 (4) (bh), the remainder of the moneys received from fees established under s. 166.20 (7g) for the payment of grants under s. 166.21. The secretary of administration shall lapse from this appropriation amounts totaling the amount expended under par. (d) at the times and in the instalments determined by the secretary of administration.

SECTION 5. 20.465 (3) (jq) and (jt) of the statutes are created to read:

20.465 (3) (jq) *Regional emergency response teams.* As a continuing appropriation, from the moneys received from fees established under s. 166.20 (7g) and not appropriated under s. 20.395 (4) (bh), the amounts in the schedule for payments to regional emergency response teams under s. 166.215 (1) and (2).

(jt) *Regional emergency response reimbursement.* All moneys received by the state emergency response board under s. 166.215 (3) for reimbursement of regional emergency response teams under s. 166.215 (2).

SECTION 6. 25.40 (1) (a) 8 of the statutes is created to read:

25.40 (1) (a) 8. fees collected under s. 85.50 that are deposited in the general fund and credited to the

appropriations under ss. 20.395 (4) (bh) and 20.465 (3) (is), (jm) and (jq).

SECTION 7. 85.50 of the statutes is created to read:

**85.50 Hazardous materials transportation registration fees.** The department shall collect the fees established under s. 166.20 (7g) to be paid by persons required to file hazardous materials transportation registration statements with the federal department of transportation under 49 USC Appendix 1805 (c).

SECTION 8. 166.20 (1) (intro.) of the statutes is repealed and recreated to read:

166.20 (1) DEFINITIONS. (intro.) In ss. 166.20 to 166.215:

SECTION 9. 166.20 (1) (fm), (ge) and (gi) of the statutes are created to read:

166.20 (1) (fm) "Hazardous material" has the meaning given in 49 USC Appendix 1802 (4).

(ge) "Level A release" means a release of a hazardous substance that necessitates the highest level of protective equipment for the skin and respiratory systems of emergency response personnel because of any of the following conditions:

1. Substances with a high degree of hazard to the skin are known or suspected to be present and skin contact is possible.

2. There are present, or there is a potential for, high atmospheric levels of substances that are harmful to the skin or capable of being absorbed through intact skin.

3. Operations at the site of the release involve a high potential for exposure to liquids or particulates that are harmful to the skin or capable of being absorbed through intact skin.

4. Response operations must be conducted in confined, poorly ventilated areas and the absence of conditions under subsds. 1 to 3 has not been established.

(gi) "Level B release" means a release of a hazardous substance that necessitates the highest level of protective equipment for the respiratory systems of emergency response personnel, but less skin protection than a level A release, because operations at the site of the release do not involve a high potential for exposure to liquids or particulates that are harmful to the skin or capable of being absorbed through intact skin and any of the following conditions exists:

1. The type and concentration of substances in the atmosphere have been identified and are dangerous to

respiration but are not harmful to skin or capable of being absorbed through intact skin.

2. The atmosphere contains less than 19.5% oxygen but does not contain substances that are harmful to skin or capable of being absorbed through intact skin.

3. Vapors or gases are present that have not been completely identified but it is known that those vapors or gases are not harmful to skin or capable of being absorbed through intact skin.

SECTION 10. 166.20 (2) (g) of the statutes is repealed.

SECTION 11. 166.20 (7) (title) of the statutes is amended to read:

166.20 (7) (title) FACILITY FEES.

SECTION 12. 166.20 (7) (d) of the statutes is amended to read:

166.20 (7) (d) The operator of a facility, including a facility engaged in farming, as defined in s. 102.04 (3), is exempt from the fees under par. (a) if the operator of the facility employs fewer than the equivalent of 10 full-time employees in this state and does not sell liquid refined petroleum gas.

SECTION 13. 166.20 (7g) of the statutes is created to read:

166.20 (7g) HAZARDOUS MATERIALS TRANSPORTATION REGISTRATION FEES. (a) The board shall establish, by rule, fees to be paid annually to the department of transportation by persons that are required to file hazardous materials transportation registration statements with the federal department of transportation under 49 USC Appendix 1805 (c).

(b) The board shall base the amount of the fees under this subsection on one or more of the following factors:

1. The amount of gross revenue from the transportation of hazardous materials.
2. The percentage of gross revenue from the transportation of hazardous materials.
3. The types of hazardous materials transported or caused to be transported.
4. The quantity of hazardous materials transported or caused to be transported.
5. The number of shipments of hazardous materials.
6. The number of activities that a person carries out for which a registration statement must be filed under 49 USC Appendix 1805 (c).
7. The threat to persons, property and the environment from the release of the hazardous materials transported or caused to be transported.
8. Other factors that the board considers appropriate.

(c) The board shall set the fees under this subsection at levels designed to fund the following, but not to generate more than \$2,300,000 annually:

1. The costs of collecting the fees.

2. Contracts with, and emergency responses by, regional emergency response teams under s. 166.215 (1) and (2).

3. The costs of administering s. 166.215.

4. A portion of the grants under s. 166.21.

(d) If a person described in par. (a) is required to pay the fee under sub. (7) (a) 2, the person shall pay under this subsection only the amount by which the fee otherwise payable under this subsection exceeds the fee under sub. (7) (a) 2, if any.

(e) The board may, by rule, establish exemptions from the fees under par. (a).

(f) The moneys received under this subsection shall be credited to the appropriations under ss. 20.395 (4) (bh) and 20.465 (3) (is), (jm) and (jq).

SECTION 14. 166.21 (2) (bm) of the statutes is amended to read:

166.21 (2) (bm) ~~Fifty percent~~ Subject to sub. (2m), 50% of the costs of computers and emergency response equipment, but not to exceed \$10,000, of which not more than \$6,000 may be for computers.

SECTION 15. 166.21 (2m) of the statutes is created to read:

166.21 (2m) STRATEGIC PLAN. A committee is eligible for grant funds under sub. (2) (bm) for emergency response equipment only if it submits to the board a strategic plan for emergency response to hazardous substance releases that includes all of the following:

(a) An analysis of the risks of hazardous substance releases in the county.

(b) Identification of the existing capability for emergency response to hazardous substance releases in the county.

(c) An assessment of needs, including equipment and training needs, related to emergency response to hazardous substance releases in the county.

(d) A process to maintain or increase the capability for emergency response to hazardous substance releases in the county.

(e) Identification of a county emergency response team that is capable of responding to a level B release that occurs at any place in the county and whose members meet the standards for hazardous materials technicians in 29 CFR 1910.120 (q) (6) (iii) and national fire protection association standards NFPA 471 and 472.

(f) Procedures for county emergency response team actions that are consistent with local emergency response plans developed under s. 166.20 (3) and the state contingency plan established under s. 144.76 (5).

SECTION 16. 166.215 of the statutes is created to read:

**166.215 Hazardous substance emergency response.**

(1) The board shall contract with no fewer than 7 and no more than 11 regional emergency response teams, each of which will assist in the emergency response to level A releases in a region of this state designated by the board. The board shall contract with at least one

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regional emergency response team in each area designated under s. 166.03 (2) (b) 1. The board may only contract with public organizations under this subsection. A member of a regional emergency response team shall meet the standards for a hazardous materials specialist in 29 CFR 1910.120 (q) (6) (iv) and national fire protection association standards NFPA 471 and 472. A contract under this subsection may provide for payments to the regional emergency response team in addition to the reimbursement provided in sub. (2).

(2) The board shall reimburse a regional emergency response team for costs incurred by the team in responding to a level A release under sub. (1). Reimbursement under this subsection is limited to amounts collected under sub. (3), until the secretary of administration certifies to the board that sufficient funds have been generated from the fees under s. 166.20 (7g) to make full reimbursement.

(3) A person who possessed or controlled a hazardous substance that was released or who caused the release of a hazardous substance shall reimburse the board for costs incurred by a regional emergency response team in responding to the release under sub. (1).

(4) A member of a regional emergency response team who is acting under a contract under sub. (1) is an employe of the state for purposes of worker's compensation benefits.

SECTION 17. 895.483 of the statutes is created to read:

**895.483 Civil liability exemption; regional and county emergency response team.** (1) A regional emergency response team and a member of such a team are immune from civil liability for acts or omissions related to carrying out responsibilities under a contract under s. 166.215 (1).

(2) A county emergency response team and a member of such a team are immune from civil liability for acts or omissions related to carrying out responsibilities pursuant to a designation under s. 166.21 (2m) (e).

SECTION 18. **Nonstatutory provisions.** (1) DEPARTMENT OF MILITARY AFFAIRS. (a) The authorized FTE positions for the department of military affairs are increased by 1.5 PR positions on July 1, 1992, to be funded from the appropriation under section 20.465 (3) (is) of the statutes, as created by this act, for hazardous substance emergency response administration.

(b) The state emergency response board shall study the potential for releases of hazardous substances that affect the inland waters of this state and the needs related to emergency response to those releases, including special training and equipment. The board shall submit the results of its study to the chief clerk of each house of the legislature for distribution to the legislature in the manner provided in section 13.172 (2) of the statutes.

(2) DEPARTMENT OF TRANSPORTATION. (a) The authorized FTE positions for the department of transportation are increased by 2.0 PR 6-month project positions on January 1, 1992, to be funded from the appropriation under section 20.395 (4) (bh) of the statutes, as created by this act, to develop the system for collecting hazardous materials transportation registration fees.

(d) The authorized FTE positions for the department of transportation are increased by 2.0 PR positions on July 1, 1992, to be funded from the appropriation under section 20.395 (4) (bh) of the statutes, as created by this act, to administer the hazardous materials transportation registration fees.

SECTION 19. **Appropriation changes; military affairs.** (1) EMERGENCY RESPONSE TRAINING; TRANSPORTATION FUND. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of military affairs under section 20.465 (3) (s) of the statutes, as affected by the acts of 1991, the dollar amount is increased by \$37,500 for fiscal year 1991-92 and the dollar amount is increased by \$37,500 for fiscal year 1992-93 to increase funding for training for emergency response to releases of hazardous substances.

(2) EMERGENCY RESPONSE TRAINING; ENVIRONMENTAL FUND. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of military affairs under section 20.465 (3) (t) of the statutes, as affected by the acts of 1991, the dollar amount is increased by \$37,500 for fiscal year 1991-92 and the dollar amount is increased by \$37,500 for fiscal year 1992-93 to increase funding for training for emergency response to releases of hazardous substances.

~~SECTION 20. **Effective dates.** This act takes effect on the day after publication, except as follows.~~

~~(1) The treatment of section 166.20 (7) (d) of the statutes takes effect on the first day of the 7th month beginning after publication.~~

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in Part