

2001 SENATE BILL 5

January 12, 2001 – Introduced by Senators BAUMGART, DECKER and SCHULTZ, cosponsored by Representatives GUNDERSON, LA FAVE, GRONEMUS, TURNER, BLACK, PLOUFF, POWERS, OLSEN, MUSSER, URBAN, BOYLE, OTT, MILLER, VRAKAS and LEIBHAM. Referred to Committee on Universities, Housing, and Government Operations.

1 **AN ACT** *to repeal* 166.22 (1) (a); *to amend* 166.20 (2) (bm) 1., 166.20 (2) (bm) 2.,
2 166.21 (2m) (e), 166.21 (2m) (f), 166.215 (2), 166.22 (1) (c), 166.22 (2), 166.22 (3),
3 166.22 (3m), 166.22 (5) (am), 166.22 (5) (b), 895.483 (title) and 895.483 (2); *to*
4 *repeal and recreate* 166.215 (3) and 166.22 (4); and *to create* 166.20 (1) (gk),
5 166.20 (1) (im), 166.20 (2) (bs) and 166.22 (1) (d) of the statutes; **relating to:**
6 reimbursement of emergency response teams and granting rule-making
7 authority.

Analysis by the Legislative Reference Bureau

Under current law, regional emergency response teams have been established to respond to “Level A” releases in their area. A “Level A” release is a release of a hazardous substance that necessitates the highest level of protective equipment for the skin and respiratory systems of emergency response personnel. Currently, local emergency response teams are required to respond to “Level B” releases. A “Level B” release is 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.

The division of emergency management in the department of military affairs oversees the state requirements under the federal laws regarding responses to releases of hazardous substances. As part of that responsibility, the division of

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emergency management promulgates rules regarding the duties of the local and regional emergency response teams and the governmental units that employ those teams. The division provides grants to those governmental units for duties related to emergency response teams and reimburses them for unreimbursed costs that are incurred in responding to a release. Included in those duties is the requirement that the emergency response team make a good faith effort to identify the person who is responsible for the hazardous substance release and to determine if that person is financially able to reimburse the team for expenses incurred in responding to the release. Currently, a person who is financially able to reimburse the team for expenses incurred in responding to the release is required to reimburse those expenses.

This bill requires the division of emergency management to promulgates rules requiring the regional and local emergency response teams to establish procedures that the teams will follow to determine if an emergency that requires a team's response exists as the result of a release or potential release of a hazardous substance. The bill requires the division of emergency management to reimburse regional and local emergency response teams for unreimbursed costs incurred in responding to an emergency resulting from a potential release if the team has established the procedures to determine if an emergency exists. Under the bill, a person who is financially able to reimburse a team for expenses incurred in responding to an emergency resulting from a potential release is required to reimburse those expenses if the team has established the procedures to determine if an emergency exists.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 166.20 (1) (gk) of the statutes is created to read:

2 166.20 (1) (gk) “Local emergency response team” means a team that the
3 committee identifies under s. 166.21 (2m) (e).

4 **SECTION 2.** 166.20 (1) (im) of the statutes is created to read:

5 166.20 (1) (im) “Regional emergency response team” means a team that the
6 division contracts with under s. 166.215 (1).

7 **SECTION 3.** 166.20 (2) (bm) 1. of the statutes is amended to read:

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1 166.20 (2) (bm) 1. If a regional or local emergency response team has made a
2 good faith effort to identify a person responsible for the emergency involving a
3 release or potential release of a hazardous substance under s. 166.215 (3) or 166.22
4 (4).

5 **SECTION 4.** 166.20 (2) (bm) 2. of the statutes is amended to read:

6 166.20 (2) (bm) 2. If a person responsible for the emergency involving a release
7 or potential release of a hazardous substance under s. 166.215 (3) or 166.22 (4) is
8 financially able or has the money or resources necessary to reimburse a regional or
9 local emergency response team for the expenses incurred by the regional or local
10 emergency response team in responding to the release emergency.

11 **SECTION 5.** 166.20 (2) (bs) of the statutes is created to read:

12 166.20 (2) (bs) 1. Promulgate rules that establish the procedures that a
13 regional emergency response team shall follow to determine if an emergency that
14 requires the team's response exists as the result of a level A release or a potential
15 level A release.

16 2. Promulgate rules that establish the procedures that a local emergency
17 response team shall follow to determine if an emergency that requires the team's
18 response exists as the result of a release or potential release of a hazardous
19 substance, as defined in s. 299.01 (6).

20 **SECTION 6.** 166.21 (2m) (e) of the statutes is amended to read:

21 166.21 (2m) (e) Identification of a ~~county~~ local emergency response team that
22 is capable of responding to a level B release that occurs at any place in the county and
23 whose members meet the standards for hazardous materials technicians in 29 CFR
24 1910.120 (q) (6) (iii) and national fire protection association standards NFPA 471 and
25 472.

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1 **SECTION 7.** 166.21 (2m) (f) of the statutes is amended to read:

2 166.21 **(2m)** (f) Procedures for county local emergency response team actions
3 that are consistent with local emergency response plans developed under s. 166.20
4 (3) and the state contingency plan established under s. 292.11 (5).

5 **SECTION 8.** 166.215 (2) of the statutes is amended to read:

6 166.215 **(2)** The division shall reimburse a regional emergency response team
7 for costs incurred by the team in responding to an emergency involving a level A
8 release under sub. (1), or a potential level A release, if the team followed the
9 procedures in the rules promulgated under s. 166.20 (2) (bs) 1. to determine if an
10 emergency requiring a response existed. Reimbursement under this subsection is
11 limited to amounts collected under sub. (3) and the amounts appropriated under s.
12 20.465 (3) (dr). Reimbursement is available under s. 20.465 (3) (dr) only if the
13 regional emergency response team has made a good faith effort to identify the person
14 responsible under sub. (3) and that person cannot be identified, or, if that person is
15 identified, the team has received reimbursement from that person to the extent that
16 the person is financially able or has determined that the person does not have
17 adequate money or other resources to reimburse the regional emergency response
18 team.

19 **SECTION 9.** 166.215 (3) of the statutes is repealed and recreated to read:

20 166.215 **(3)** A person shall reimburse the division for costs incurred by a
21 regional emergency response team in responding to an emergency if the team
22 followed the procedures established under s. 166.20 (2) (bs) 1. to determine if an
23 emergency requiring the team's response existed and if any of the following
24 conditions applies:

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1 (a) The person possessed or controlled a hazardous substance that was involved
2 in the emergency.

3 (b) The person caused the emergency.

4 **SECTION 10.** 166.22 (1) (a) of the statutes is repealed.

5 **SECTION 11.** 166.22 (1) (c) of the statutes is amended to read:

6 166.22 (1) (c) “Local agency” means an agency of a county, city, village, or town,
7 including a municipal police or fire department, a municipal health organization, a
8 county office of emergency management, a county sheriff, an emergency medical
9 service, a local emergency response team, or a public works department.

10 **SECTION 12.** 166.22 (1) (d) of the statutes is created to read:

11 166.22 (1) (d) “Local emergency response team” means a team that the
12 committee identifies under s. 166.21 (2m) (e).

13 **SECTION 13.** 166.22 (2) of the statutes is amended to read:

14 166.22 (2) A person who possesses or controls a hazardous substance that is
15 ~~discharged~~ released or who causes the ~~discharge~~ release of a hazardous substance
16 shall take the actions necessary to protect public health and safety and prevent
17 damage to property.

18 **SECTION 14.** 166.22 (3) of the statutes is amended to read:

19 166.22 (3) If action required under sub. (2) is not being adequately taken or the
20 identity of the person responsible for a ~~discharge~~ an emergency involving a release
21 or potential release of a hazardous substance is unknown and the ~~discharge~~
22 emergency involving a release or potential release threatens public health or safety
23 or damage to property, a local agency may take any emergency action that is
24 consistent with the contingency plan for the undertaking of emergency actions in
25 response to the ~~discharge~~ release or potential release of hazardous substances

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1 established by the department of natural resources under s. 292.11 (5) and that it
2 considers appropriate under the circumstances.

3 **SECTION 15.** 166.22 (3m) of the statutes is amended to read:

4 166.22 **(3m)** The division shall reimburse a local emergency response team for
5 costs incurred by the team in responding to an emergency involving a hazardous
6 substance discharge under sub. (3) release, or potential release, if the team followed
7 the procedures in the rules promulgated under s. 166.20 (2) (bs) 2. to determine if an
8 emergency requiring the team's response existed. Reimbursement under this
9 subsection is limited to the amount appropriated under s. 20.465 (3) (dr).
10 Reimbursement is available under s. 20.465 (3) (dr) only if the local emergency
11 response team has made a good faith effort to identify the person responsible under
12 sub. (4) and that person cannot be identified, or, if that person is identified, the team
13 has received reimbursement from that person to the extent that the person is
14 financially able or has determined that the person does not have adequate money or
15 other resources to reimburse the local emergency response team.

16 **SECTION 16.** 166.22 (4) of the statutes is repealed and recreated to read:

17 166.22 **(4)** (a) Except as provided in par. (b), a person shall reimburse a local
18 agency as provided in sub. (5) for actual, reasonable, and necessary expenses
19 incurred in responding to an emergency involving the release or potential release of
20 a hazardous substance if any of the following conditions applies:

21 1. The person possessed or controlled a hazardous substance involved in the
22 emergency.

23 2. The person caused the emergency.

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1 (b) A local emergency response team may receive reimbursement under par. (a)
2 only if the team followed the procedures established under s. 166.20 (2) (bs) 2. to
3 determine if an emergency requiring the team's response existed.

4 **SECTION 17.** 166.22 (5) (am) of the statutes is amended to read:

5 166.22 (5) (am) A local agency seeking reimbursement under sub. (4) shall
6 submit a claim stating its expenses to the reviewing entity for the county in which
7 the ~~discharge~~ emergency occurred.

8 **SECTION 18.** 166.22 (5) (b) of the statutes is amended to read:

9 166.22 (5) (b) The reviewing entity shall review claims submitted under par.
10 (am) and determine the amount of reasonable and necessary expenses incurred. The
11 reviewing entity shall provide a person who is liable for reimbursement under sub.
12 (4) with a notice of the amount of expenses it has determined to be reasonable and
13 necessary that ~~arise from one discharge and are~~ arose from the emergency involving
14 the release or potential release of a hazardous substance and that were incurred by
15 all local agencies from which the reviewing entity receives a claim.

16 **SECTION 19.** 895.483 (title) of the statutes is amended to read:

17 **895.483 (title) Civil liability exemption; regional and county local**
18 **emergency response teams and their sponsoring agencies.**

19 **SECTION 20.** 895.483 (2) of the statutes is amended to read:

20 895.483 (2) A ~~county~~ local emergency response team, a member of such a team
21 and the county, city, village, or town that contracts to provide the emergency response
22 team to the county are immune from civil liability for acts or omissions related to
23 carrying out responsibilities pursuant to a designation under s. 166.21 (2m) (e).

24 **SECTION 21. Initial applicability; military affairs.**

