

**HB 577-FN – AS INTRODUCED**

2013 SESSION

13-0359  
08/05

HOUSE BILL

***577-FN***

AN ACT

relative to responsibility for hazardous materials accidents.

SPONSORS:

Rep. A. White, Graf 13; Rep. Goley, Hills 8; Rep. Borden, Rock 24; Rep. Sherman,  
Rock 24

COMMITTEE:

Judiciary

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ANALYSIS

This bill explains which party bears responsibility for costs associated with hazardous materials accidents.

This bill is a request of the state fire marshal.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to responsibility for hazardous materials accidents.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Liability for Hazardous Waste Clean Up. Amend RSA 154:8-a to read as follows:

2 154:8-a Liability Concerning Hazardous Materials Accidents. Notwithstanding any other  
3 provision of law, no person who provides assistance or advice in mitigating or attempting to mitigate  
4 the effects of an actual or threatened discharge of hazardous materials or **hazardous** wastes or in  
5 preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such  
6 discharge shall be subject to civil liabilities or penalties of any kind, providing that such assistance  
7 or advice is rendered at the request of state, county or local officials in charge at the emergency  
8 scene.

9 I. The immunities provided in this section shall not apply to any person:

10 (a) Whose act or omission caused in whole or in part such actual or threatened discharge  
11 ~~and~~ or who would otherwise be liable therefor; or

12 (b) Who receives compensation other than reimbursement for out-of-pocket expenses for  
13 services in rendering such assistance or advice.

14 II. Definitions. As used in this section:

15 (a) "Discharge" shall include leakage, seepage, or other release of hazardous materials or  
16 **hazardous** wastes.

17 (b) "Hazardous materials" means hazardous materials as defined in RSA 147-B:2, VIII.

18 (c) "**Hazardous** wastes" means wastes as defined in RSA 147-B:2, VII.

19 II-a.(a) Any person ~~whose act or omission caused the~~ **who was the owner, custodian, or**  
20 **otherwise had possession or control of the hazardous materials involved in an** actual or  
21 threatened discharge of hazardous materials or ~~toxic~~ **hazardous** wastes which resulted in the  
22 reasonable and proportionate response of police, fire, emergency preparedness, or emergency  
23 response equipment shall be responsible for payment of the cost of the equipment use or replacement  
24 of the equipment used, if damaged or expended, in containing the hazardous materials or ~~toxic~~  
25 **hazardous** wastes.

26 (b) Any person ~~whose act or omission caused the~~ **who was the owner, custodian, or**  
27 **otherwise had possession or control of the hazardous materials or hazardous wastes**  
28 **involved in an** actual or threatened discharge of hazardous materials or ~~toxic~~ **hazardous** wastes  
29 which resulted in the reasonable and proportionate response of police, fire, emergency preparedness,  
30 or emergency response equipment shall be responsible for payment of the personnel costs of police,  
31 fire, public safety, **county** and municipal personnel, including mutual aid standby personnel, directly

1 involved in the emergency response and any reasonable court costs and legal fees incurred by the  
2 municipality, organization, **county**, or mutual aid district in collecting costs or defending an  
3 unsuccessful appeal of such costs.

4 (c) The response to fires or other emergencies where the discharge of hazardous  
5 materials is incidental to the fire or other emergency and does not require the use of specialized  
6 hazardous materials response equipment or personnel specially trained pursuant to 40 C.F.R. section  
7 311 shall not be costs eligible for reimbursement.

8 (d) Within 30 days after the equipment leaves the site of the incident, the municipality,  
9 organization, or mutual aid district which seeks payment shall submit a bill for cost of equipment  
10 use, equipment cleanup, or equipment replacement and the costs of personnel, if applicable, to the  
11 person responsible for the equipment contamination under subparagraph (a) and the costs of  
12 personnel under subparagraph (b). At the time of billing, the municipality, organization, or mutual  
13 aid district which seeks payment shall notify the billed party that an appeal may be filed with the  
14 commissioner of safety within 30 days of the receipt of the bill. Payment shall be made directly to  
15 the municipality, to the organization, or to the mutual aid district. A municipality, organization, or  
16 mutual aid district within whose jurisdiction the incident occurs is authorized to collect payment on  
17 behalf of the municipalities, organizations, or mutual aid districts that participated in the response  
18 and to disburse payment accordingly.

19 (e) The person [~~responsible for the equipment contamination~~] **identified in**  
20 **subparagraphs (a) and (b) as the party responsible for the hazardous materials response**  
21 may appeal payment for such costs within 30 days of receipt of the bill for the costs to the  
22 commissioner of safety. The commissioner shall hold an administrative hearing within 30 days after  
23 receiving the appeal, at which time the extent of [~~liability for~~] **propriety and reasonableness of**  
24 **the billed** costs shall be determined. The commissioner shall issue a decision within 30 days after  
25 holding the hearing. Any person aggrieved by a decision of the commissioner under this section may  
26 appeal the decision to the superior court in the same manner as that prescribed in RSA 263:75, II  
27 and III. **In the event that an appeal from the decision of the commissioner is filed in the**  
28 **superior court, the superior court may also grant an award of reasonable attorney's fees**  
29 **and costs to the ultimate prevailing party in such superior court action.**

30 (f) If no appeal **to the commissioner pursuant to subparagraph (e)** is filed within 30  
31 days after receipt of the bill, the person responsible for the hazardous materials response shall be  
32 deemed to have waived all rights to appeal and shall be liable to the municipality, **county**,  
33 organization, or mutual aid district for the total amount billed, subject to the additional penalty and  
34 interest set forth under subparagraph (h) in the case of nonpayment.

35 (g) The commissioner of safety shall establish rates for equipment use, supplies, and  
36 costs of personnel that shall be the maximum amount that may be charged by any municipality,  
37 organization, or mutual aid district in accordance with this section. The rates and costs, and

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1 guidelines for establishing them, shall be adopted pursuant to RSA 541-A. To the extent possible,  
2 the rates and costs shall reflect the actual expenses, including overhead costs, for emergency  
3 response to hazardous materials incidents for municipalities throughout the state.

4 (h) A one-time penalty of \$1,000 plus interest assessed at the rate of interest established  
5 in RSA 336:1, may be assessed for nonpayment.

6 III. Nothing in this section shall be construed to limit or otherwise affect the liability of any  
7 person for damages resulting from such person's gross negligence or from such person's willful,  
8 reckless or wanton misconduct ***nor shall this section in any way diminish the right of the***  
9 ***person identified in subparagraphs II-a(a) and II-a(b) as the party responsible for the***  
10 ***hazardous materials response to seek reimbursement from any third party believed to be***  
11 ***causally responsible for the hazardous materials response.***

12 2 Effective Date. This act shall take effect January 1, 2014.

LBAO  
13-0359  
01/14/13

### **HB 577-FN - FISCAL NOTE**

AN ACT                    relative to responsibility for hazardous materials accidents.

#### **FISCAL IMPACT:**

The New Hampshire Municipal Association and New Hampshire Association of Counties state this bill, **as introduced**, may increase county and local revenue by an indeterminable amount in FY 2014 and each year thereafter. There is no fiscal impact on state, county, and local expenditures, or state revenue.

#### **METHODOLOGY:**

The New Hampshire Municipal Association states this bill modifies the statutory assignment of liability for costs when police, fire, and other public safety personnel are required to respond to a discharge of hazardous materials or hazardous waste. In general, the bill expands the group of persons who may be liable to reimburse a municipality or other political subdivision for equipment and personnel costs. The Association states municipal revenue may increase since municipalities will be able to recover additional costs as a result of the bill. The Association states the precise fiscal impact will depend on circumstances that cannot be predicted, including the number and seriousness of hazardous waste discharges and the manner in which each discharge occurs.

The New Hampshire Association of Counties states this bill explicitly adds counties to the list of responders that may recover the cost of emergency responses. The Association states that to the extent there is a hazardous materials accident and to the extent counties participate in emergency response, counties may be able to recover expenses, resulting in increased revenue. The Association states it is unable to predict the number of instances in which a county may participate in and recover costs for an emergency response.

The Department of Safety states the bill has no fiscal impact on the Department.