

Bill as  
Introduced

SB 136 - AS INTRODUCED

2003 SESSION

03-1077  
08/10

SENATE BILL

**136**

AN ACT relative to liability for hazardous materials accidents.

SPONSORS: Sen. Prescott, Dist 23; Rep. Welch, Rock 79

COMMITTEE: Environment

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ANALYSIS

This bill extends liability to those who threaten a hazardous materials accident.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Three*

AN ACT relative to liability for hazardous materials accidents.

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

1       1 Liability Concerning Hazardous Materials Accidents. Amend RSA 154:8-a, II-a(a) and (b) to  
2 read as follows:

3           II-a.(a) Any person whose act or omission caused the actual *or threatened* discharge of  
4 hazardous materials or toxic wastes which resulted in the response of police, fire, emergency  
5 preparedness, or emergency response equipment shall be responsible for payment of the cost of the  
6 equipment use or replacement of the equipment used, if damaged or expended, in containing the  
7 hazardous materials or toxic wastes.

8           (b) Any person whose act or omission caused the actual *or threatened* discharge of  
9 hazardous materials or toxic wastes which resulted in the response of police, fire, emergency  
10 preparedness, or emergency response equipment shall be responsible for payment of the personnel  
11 costs of police, fire, public safety, and municipal personnel, including mutual aid standby personnel,  
12 directly involved in the emergency response, except that costs for on-duty paid personnel who have  
13 responded to the emergency involving the discharge of hazardous materials during their assigned  
14 duty shift shall not be costs eligible for reimbursement.

15       2 Effective Date. This act shall take effect January 1, 2004.

# Amendments



Amendment to SB 136

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Liability Concerning Hazardous Materials Accidents. RSA 154:8-a, II-a(a) and (b) are  
4 repealed and reenacted to read as follows:

5 II-a.(a) Any person whose act or omission caused a reasonable and proportionate response of  
6 police, fire, emergency preparedness, or emergency response equipment to an actual or potential  
7 discharge of hazardous materials or toxic wastes shall be responsible for payment of the cost of the  
8 equipment use or replacement of the equipment used, if damaged or expended, in responding to or  
9 containing the hazardous materials or toxic wastes.

10 (b) Any person whose act or omission caused a reasonable and proportionate response of  
11 police, fire, emergency preparedness, or emergency response equipment to an actual or potential  
12 discharge of hazardous materials or toxic wastes shall be responsible for payment of the personnel  
13 costs of police, fire, public safety, and municipal personnel, including mutual aid standby personnel,  
14 directly involved in the emergency response, except that costs for on-duty paid personnel who have  
15 responded to the emergency involving the discharge of hazardous materials during their assigned  
16 duty shift shall not be costs eligible for reimbursement.

17 2 Effective Date. This act shall take effect January 1, 2004.



2003-1437h

**AMENDED ANALYSIS**

This bill extends liability to those whose action or inaction causes an emergency response to a hazardous materials accident or potential accident.



Amendment to SB 136

1 Amend the bill by replacing section 1 with the following:

2

3 1 Liability Concerning Hazardous Materials Accidents. Amend RSA 154:8-a, II-a(a) and (b) to  
4 read as follows:

5 II-a.(a) Any person whose act or omission caused the actual *or threatened* discharge of  
6 hazardous materials or toxic wastes which resulted in the *reasonable and proportionate* response  
7 of police, fire, emergency preparedness, or emergency response equipment shall be responsible for  
8 payment of the cost of the equipment use or replacement of the equipment used, if damaged or  
9 expended, in containing the hazardous materials or toxic wastes.

10 (b) Any person whose act or omission caused the actual *or threatened* discharge of  
11 hazardous materials or toxic wastes which resulted in the *reasonable and proportionate* response  
12 of police, fire, emergency preparedness, or emergency response equipment shall be responsible for  
13 payment of the personnel costs of police, fire, public safety, and municipal personnel, including  
14 mutual aid standby personnel, directly involved in the emergency response, except that costs for on-  
15 duty paid personnel who have responded to the emergency involving the discharge of hazardous  
16 materials during their assigned duty shift shall not be costs eligible for reimbursement.

# Committee Minutes





George T. Musler  
Chairman

David L. Babson Jr.  
Vice Chairman

# State of New Hampshire

## HOUSE OF REPRESENTATIVES

Legislative Office Building, 33 North State Street  
Concord, NH 03301-6328

TEL: (603) 271-3403  
TDD Access: Relay NH 1-800-735-2964

## COMMITTEE ON ENVIRONMENT AND AGRICULTURE

# MEMORANDUM

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**TO:** Environment & Agriculture Committee Members

**FROM:** Rep. George T. Musler, Chairman

**DATE:** April 22, 2003

**SUBJECT:** Special Subcommittee SB 136 – Relative to liability for hazardous materials accidents.

---

I am establishing a Special Subcommittee to review this bill and offer suggestions that might make the bill a workable instrument.

The Committee Members are:

- Rep. Williams, Chairman
- Rep. Phinzy
- Rep. Babson
- Rep. P. Allen
- Rep. Ahern
- Rep. Rous

GTM/he  
cc: Speaker of the House  
Sen. Prescott  
Rep. Welch

# Hearing Minutes

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

PUBLIC HEARING ON SB 136

**BILL TITLE:** relative to liability for hazardous materials accidents.  
**DATE:** April 22, 2003  
**LOB ROOM:** 303      **Time Public Hearing Called to Order:** 10:00 A.M.  
**Time Adjourned:** 10:20 A.M.

(please circle if present)

**Committee Members:** Reps. Musler, Babson, Messier, L. Pratt, Philbrick, Dunlap, Williams, Varrell, Olimpio, Ahern, F. Allen, Cernota, Foley, Hansen, Scott, Phinizy, Owen, P. Allen, Slack, Diamond and Rous.

**Bill Sponsors:** Sen. Prescott, Dist 23; Rep. Welch, Rock 79

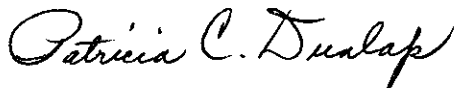
TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Senator Russell Prescott** - Prime sponsor of the bill. Accident with hazardous material. Hazardous material response team showed up. In spite of driver's negligence - hazardous material team was held responsible for expense.

**David Minnis, NH Fire Chiefs** - Supports the bill. Add words "or threatened". Fire Marshall sets up standards for costs for reimbursements to fire departments for use of equipment use to remove hazardous waste. If there is an accident with potential incident of hazardous waste the oil company or owner of the truck responsible for any hazardous or toxic wastes would be responsible for costs. Hazardous response costs between \$7,000.00 & \$10,000.00. All tankers are required to carry \$1,000,000.00 insurance.

Respectfully submitted,



Rep. Patricia C. Dunlap  
Clerk

# Sub-Committee Minutes

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

SUBCOMMITTEE WORK SESSION ON SB 136

**BILL TITLE:** relative to liability for hazardous materials accidents.

**DATE:** April 29, 2003

**Subcommittee Members:** Reps. Williams, Phinizy, Babson, P. Allen, Ahern, & Rous

**Comments and Recommendations:** Action deferred 3-2 for Rep. T. Allen to prepare an amendment.

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Peter Allen  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

SUBCOMMITTEE WORK SESSION ON SB 136

**BILL TITLE:** relative to liability for hazardous materials accidents.

**DATE:** 4/27/03

**Subcommittee Members:** Reps. Williams, Phinizy, Bobson, P. Allen, Ahern, + Rous

**Comments and Recommendations:** Action deferred 3-2 for Rep. T. Allen to prepare an amendment.

**Amendments:**

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.  
Subcommittee Chairman/Clerk

# COMMITTEE REPORT

COMMITTEE: Env. & Agriculture SB136 Subcommittee

BILL NUMBER: SB 136

TITLE: Relative to liability for hazardous materials accidents

DATE: 4/29/03 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- RE-REFER
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.

**STATEMENT OF INTENT:**

action deferred 3-2 for Rep Tim Allen to prepare an amendment

COMMITTEE VOTE: \_\_\_\_\_

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. \_\_\_\_\_

For the Committee

SB 136 - AS INTRODUCED

2003 SESSION

03-1077

08/10

SENATE BILL

**136**

AN ACT

relative to liability for hazardous materials accidents.

SPONSORS:

Sen. Prescott, Dist 23; Rep. Welch, Rock 79

COMMITTEE:

Environment

ANALYSIS

This bill extends liability to those who threaten a hazardous materials accident.

Explanation:

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

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

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<u>Phinn</u>	Subcommittee	
<u>William</u>	on	
<u>Phinn</u>	SB 136	10:00
<u>Abson</u>	<u>HB 103</u>	10:30
<u>Allen</u>	+ depend on <u>action</u>	
<u>P Allen</u>	SB 87	11:30



STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Three*

AN ACT relative to liability for hazardous materials accidents.

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

1 1 Liability Concerning Hazardous Materials Accidents. Amend RSA 154:8-a, II-a(a) and (b) to  
2 read as follows:

3 II-a.(a) Any person whose act or omission caused the actual ~~or threatened~~ discharge of  
4 hazardous materials or toxic wastes which resulted in the <sup>response or response</sup> response of police, fire, emergency  
5 preparedness, or emergency response equipment shall be responsible for payment of the cost of the <sup>said</sup> said  
6 equipment use or replacement of the equipment used, if damaged or expended, in containing the  
7 hazardous materials or toxic wastes.

8 (b) Any person whose act or omission caused the actual *or threatened* discharge of  
9 hazardous materials or toxic wastes which resulted in the response of police, fire, emergency  
10 preparedness, or emergency response equipment shall be responsible for payment of the personnel  
11 costs of police, fire, public safety, and municipal personnel, including mutual aid standby personnel,  
12 directly involved in the emergency response, except that costs for on-duty paid personnel who have  
13 responded to the emergency involving the discharge of hazardous materials during their assigned  
14 duty shift shall not be costs eligible for reimbursement.

15 2 Effective Date. This act shall take effect January 1, 2004.

# Testimony

Citation/Title

N.H. Rev. Stat. Sec. 154:7, Authority of Fire Officer in Charge.

N.H. Rev. Stat. § 154:7

**REVISED STATUTES ANNOTATED OF THE STATE OF NEW HAMPSHIRE**  
**TITLE XII. PUBLIC SAFETY AND WELFARE**  
**CHAPTER 154. FIREWARDS, FIREFIGHTERS, AND FIRE HAZARDS**  
**FIREWARDS, FIRE CHIEFS AND FIRE DEPARTMENTS; ORGANIZATION,**  
**POWERS AND DUTIES**

*Current through End of 2002 Reg. Sess.*

**154:7 Authority of Fire Officer in Charge.**

I. Terms used in this section shall be construed as follows, unless a different meaning is clearly apparent from the language or context, or is otherwise inconsistent with the manifest intention of the legislature.

(a) "Fire" shall include any and all effects of combustion.

(b) "Service call" shall include any request for the services of the fire department which involves a non-emergency.

(c) "Other emergency" shall include any other real emergency which does not directly involve the extinguishment of an actual fire; except that with respect to a propelled vehicle accident on or immediately adjacent to a way as defined in RSA 259:125 the term is limited to:

(1) An accident involving the transportation of any hazardous material as defined in Title 49 of the Code of Federal Regulations.

(2) An accident involving the spillage of fuel.

(3) An accident involving injury to persons in places where the fire department is responsible for the provision of emergency medical services.

(d) "Fire officer in charge" shall include the fire chief or any other elected or appointed fire officer or any member serving in the capacity of fire officer in charge.

(e) "Police officer" shall include any constable or other officer authorized to make arrests or serve process who is invested by law with authority to direct, control or regulate traffic.

II. While any duly constituted fire department recognized by the state fire marshal is responding to or operating at a fire, service call or other emergency, the fire officer in charge shall have the following authority:

(a) To control and direct the activities at such scene.

(b) To order any persons to leave any building or place in the vicinity of such scene for the purpose of protecting such persons from injury or remove persons interfering with duties.

(c) To blockade any public highway, street or private right-of-way temporarily while at such scene.

\*9273 (d) To trespass at any time of the day or night without liability while at such scene.

(e) To enter any building, including private dwellings, or upon any premises where a fire is in progress, or where there is reasonable cause to believe a fire is in progress, for the purpose of extinguishing the fire.

(f) To enter any building, including private dwellings, or premises near the scene of the fire for the purpose of protecting the building or premises or for the purpose of extinguishing the fire which is in progress in another building or premises.

(g) To direct without liability the removal or destruction of any fence, house, buildings, vehicle or other thin-

N.H. Rev. Stat. Sec. 154:7, Authority of Fire Officer in Charge.

which the fire officer in charge may judge necessary to prevent the further spread of the fire.

(h) To request and be supplied materials such as sand, treatments, chemicals and special equipment when it is deemed a necessity, to prevent the further spread of the fire.

(i) To order disengagement or discouplement of any convoy, caravan or train of vehicles, craft or railway cars if deemed a necessity in the interest of safety of persons or property.

(j) To direct industrial management or other personnel and equipment within the jurisdiction of the fire officer in charge whenever such officer's company or department is called to respond to such, if in the officer's opinion such action is in the interest of public safety.

(k) Upon request, to apprise the state fire marshal, or designee, of all hazardous materials incidents and to keep the state fire marshal or designee informed of the situation. The state fire marshal or designee shall take control of a hazardous materials incident upon the request of the local fire chief or fire official in charge, or if the state fire marshal or designee believes that the welfare of the public is not being appropriately served. Upon assuming control of a hazardous materials incident, the state fire marshal or designee shall have all of the authority outlined in this chapter.

III. Except as provided in RSA 154:7-a, the police officer in charge shall have authority to direct police officers at the scene to direct, control and regulate traffic, to gather investigative information, and to preserve and collect evidence, subject to the authority conferred upon the fire officer in charge by this section.

<General Materials (GM) - References, Annotations, or Tables>

## HISTORICAL NOTES

### HISTORY

Source. RS 111:2. CS 114:2. GS 96:3. GL 106:3. PS 115:6. PL 146:6. RL 175:6. RSA 154:7. 1975, 443:6. 1979, 344:6. 1983, 393:6. 1989, 309:2. 1992, 154:6, 7. 1998, 318:15, 16, eff. Aug. 25, 1998.

\*9274 Amendments--1998. Paragraph II(g): Substituted "the fire officer in charge" for "he".

Paragraph II(j): Substituted "the jurisdiction of the fire officer in charge whenever such officer's company" for "his jurisdiction whenever his company" and "the officer's" for "his" preceding "opinion".

Paragraph II(k): Substituted "the state fire marshal or designee" for "him" in the first sentence and deleted "his" preceding "designee" wherever it appeared.

--1992. Paragraph I(b): Deleted "fire related situation" following "non-emergency".

Paragraph I(c): Substituted "RSA 259:125" for "RSA 259:1, XXXV" following "defined in" in the introductory paragraph and redesignated subpars (i) through (iii) as subpars. (1) through (3).

Paragraph III: Added "except as provided in RSA 154:7-a" preceding "the police".

--1989. Paragraph II(k): Amended generally.

--1983. Paragraph II(k): Amended generally.

--1979. Amended section generally.

--1975. Amended section generally.

## REFERENCES

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Citation/Title

N.H. Rev. Stat. Sec. 154:8-a, Liability Concerning Hazardous Materials Accidents.

N.H. Rev. Stat. § 154:8-a

**REVISED STATUTES ANNOTATED OF THE STATE OF NEW HAMPSHIRE**  
**TITLE XII. PUBLIC SAFETY AND WELFARE**  
**CHAPTER 154. FIREWARDS, FIREFIGHTERS, AND FIRE HAZARDS**  
**FIREWARDS, FIRE CHIEFS AND FIRE DEPARTMENTS; ORGANIZATION,**  
**POWERS AND DUTIES**

*Current through End of 2002 Reg. Sess.*

**154:8-a Liability Concerning Hazardous Materials Accidents.**

Notwithstanding any other provision of law, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials or wastes or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such discharge shall be subject to civil liabilities or penalties of any kind, providing that such assistance or advice is rendered at the request of state, county or local officials in charge at the emergency scene.

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

- (a) Whose act or omission caused in whole or in part such actual or threatened discharge and who would otherwise be liable therefor; or
- (b) Who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

II. Definitions. As used in this section:

- (a) "Discharge" shall include leakage, seepage, or other release of hazardous materials or wastes.
- (b) "Hazardous materials" means hazardous materials as defined in RSA 147-B:2, VIII.
- (c) "Wastes" means wastes as defined in RSA 147-B:2, VII.

II-a. (a) Any person whose act or omission caused the actual discharge of hazardous materials or toxic wastes which resulted in the response of police, fire, emergency preparedness, or emergency response equipment shall be responsible for payment of the cost of the equipment use or replacement of the equipment used, if damaged or expended, in containing the hazardous materials or toxic wastes.

(b) Any person whose act or omission caused the actual discharge of hazardous materials or toxic wastes shall be responsible for payment of the personnel costs of police, fire, public safety, and municipal personnel, including mutual aid standby personnel, directly involved in the emergency response, except that costs for on-duty paid personnel who have responded to the emergency involving the discharge of hazardous materials during their assigned duty shift shall not be costs eligible for reimbursement.

**\*9279** (c) The response to fires or other emergencies where the discharge of hazardous materials is incidental to the fire or other emergency and does not require the use of specialized hazardous materials response equipment or personnel specially trained pursuant to 40 C.F.R. section 311 shall not be costs eligible for reimbursement.

(d) Within 30 days after the equipment leaves the site of the incident, the municipality, organization, or

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

(e) The person responsible for the equipment contamination may appeal payment for such costs within 30 days of receipt of the bill for the costs to the commissioner of safety. The commissioner shall hold an administrative hearing within 30 days after receiving the appeal, at which time the extent of liability for costs shall be determined. The commissioner shall issue a decision within 30 days after holding the hearing. Any person aggrieved by a decision of the commissioner under this section may appeal the decision to the superior court in the same manner as that prescribed in RSA 263:75, II and III.

(f) If no appeal is filed within 30 days after receipt of the bill, the person responsible for the equipment contamination shall be deemed to have waived all rights to appeal and shall be liable to the municipality, organization, or mutual aid district for the total amount billed.

(g) The commissioner of safety shall establish rates for equipment usage and personnel costs that shall be the maximum amount that may be charged by any municipality, organization, or mutual aid district in accordance with this section. The guidelines for establishing the rates shall be adopted pursuant to RSA 541-A. To the extent possible, the rates shall reflect the actual costs for emergency response to hazardous materials incidents for municipalities throughout the state.

**\*9280 III.** Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence or from such person's willful, reckless or wanton misconduct.

<General Materials (GM) - References, Annotations, or Tables>

## HISTORICAL NOTES

### HISTORY

Source. 1981, 413:4. 1983, 393:9. 1989, 91:1. 1992, 154:10. 1993, 28:10, 1998, 318:20; 367:1, eff. Aug. 25, 1998.

Amendments--1998. Paragraph I(b): Chapter 318 deleted "his" preceding "services".

Paragraph II-a: Amended generally by ch. 367.

--1993. Paragraph II-a(a): Added "and for the costs of the police, fire, public safety, and municipal personnel involved in the emergency response" following "replacement".

Paragraph II-a(b): Inserted "and the costs of personnel, if appropriate" following "replacement" in the first sentence and substituted "such costs" for "the cost of equipment cleanup or replacement" preceding "within" and "the costs" for "that cost" following "the bill for" in the third sentence.

--1992. Paragraph II: Substituted "RSA 147-B:2, VIII" for "RSA 106-A:17" in subpar. (b) and "RSA 147-B:2, VII" for "RSA 106-A:17" in subpar. (c).

--1989. Paragraph II-a: Added.

--1983. Amended section generally.

Citation/Title

N.H. Rev. Stat. Sec. 147:58, Civil Liability for Hazardous Waste Violations.

N.H. Rev. Stat. § 147:58

**REVISED STATUTES ANNOTATED OF THE STATE OF NEW HAMPSHIRE  
TITLE X. PUBLIC HEALTH  
CHAPTER 147. NUISANCES; TOILETS; DRAINS; EXPECTORATION;  
RUBBISH AND WASTE  
HAZARDOUS WASTE MANAGEMENT PROGRAM**

*Current through End of 2002 Reg. Sess.*

**147:58 Civil Liability for Hazardous Waste Violations.**

I. Any person who is convicted of violation of a permit, rule, standard, requirement, or order under RSA 147:55 and who is made a defendant in a civil action arising from that violation shall be liable to a successful plaintiff in an amount equal to 3 times any actual damages sustained by such plaintiff.

II. The provisions of this section shall not relieve the plaintiff in any civil action from the burden of proving the defendant's liability.

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORY**

Source. 1981, 268:1, eff. Aug. 15, 1981.

References in text. RSA 147:55, referred to in par. I, was repealed by 1981, 413:1, eff. June 23, 1981.

**REFERENCES**

**LIBRARY REFERENCES**

West Key Number

Health and Environment ☞ 28, 38.

CJS

Health and Environment § 154.

Don

## Statutes Relevant to SB 136

### **154:8-a Liability Concerning Hazardous Materials Accidents.**

Notwithstanding any other provision of law, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials or wastes or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such discharge shall be subject to civil liabilities or penalties of any kind, providing that such assistance or advice is rendered at the request of state, county or local officials in charge at the emergency scene.

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

- (a) Whose act or omission caused in whole or in part such actual or threatened discharge and who would otherwise be liable therefor; or
- (b) Who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

II. Definitions. As used in this section:

- (a) "Discharge" shall include leakage, seepage, or other release of hazardous materials or wastes.
- (b) "Hazardous materials" means hazardous materials as defined in RSA 147-B:2, VIII.
- (c) "Wastes" means wastes as defined in RSA 147-B:2, VII.

II-a. (a) Any person whose act or omission caused the actual discharge of hazardous materials or toxic wastes which resulted in the response of police, fire, emergency preparedness, or emergency response equipment shall be responsible for payment of the cost of the equipment use or replacement of the equipment used, if damaged or expended, in containing the hazardous materials or toxic wastes.

(b) Any person whose act or omission caused the actual discharge of hazardous materials or toxic wastes shall be responsible for payment of the personnel costs of police, fire, public safety, and municipal personnel, including mutual aid standby personnel, directly involved in the emergency response, except that costs for on-duty paid personnel who have responded to the emergency involving the discharge of hazardous materials during their assigned duty shift shall not be costs eligible for reimbursement.

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



reimbursement.

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

(e) The person responsible for the equipment contamination may appeal payment for such costs within 30 days of receipt of the bill for the costs to the commissioner of safety. The commissioner shall hold an administrative hearing within 30 days after receiving the appeal, at which time the extent of liability for costs shall be determined. The commissioner shall issue a decision within 30 days after holding the hearing. Any person aggrieved by a decision of the commissioner under this section may appeal the decision to the superior court in the same manner as that prescribed in RSA 263:75, II and III.

(f) If no appeal is filed within 30 days after receipt of the bill, the person responsible for the equipment contamination shall be deemed to have waived all rights to appeal and shall be liable to the municipality, organization, or mutual aid district for the total amount billed.

(g) The commissioner of safety shall establish rates for equipment usage and personnel costs that shall be the maximum amount that may be charged by any municipality, organization, or mutual aid district in accordance with this section. The guidelines for establishing the rates shall be adopted pursuant to RSA 541-A. To the extent possible, the rates shall reflect the actual costs for emergency response to hazardous materials incidents for municipalities throughout the state.

III. Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence or from such person's willful, reckless or wanton misconduct.

Source. 1981, 413:4. 1983, 393:9. 1989, 91:1. 1992, 154:10. 1993, 28:10, 1998, 318:20; 367:1, eff. Aug. 25, 1998.

**147-B:2 Definitions.** In this chapter, the following words shall have the following meanings, unless the context otherwise requires:

...  
VII. "Hazardous waste" means a solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes:

(a) Which, because of either quantity, concentration, or physical, chemical, or infectious characteristics may:

(1) Cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness; or

(2) Pose a present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of or otherwise mismanaged.

(b) Or which has been identified as a hazardous waste by the department using the criteria established under RSA 147-A:3, I or as listed under RSA 147-A:3, II. Such wastes include, but are not limited to, those which are reactive, toxic, corrosive, ignitable, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means. Such wastes do not include radioactive substances that are regulated by the Atomic Energy Act of 1954, as amended.

VIII. "Hazardous materials" means those substances or materials in such quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce, by all modes which may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases which are listed by the Materials Transportation Bureau of the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as amended.

# Voting Sheets

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

EXECUTIVE SESSION on SB 136

**BILL TITLE:** relative to liability for hazardous materials accidents.

**DATE:** May 13, 2003

**LOB ROOM:** 303

**Amendments:**

Sponsor: Rep. Environment & Agriculture OLS Document #: 2003 1503h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. T. Allen

Seconded by Rep. Musler

Vote: 12-0 (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. T. Allen

Seconded by Rep. Musler

Vote: 12-0 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Patricia C. Dunlap, Clerk

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

EXECUTIVE SESSION on SB 136

BILL TITLE: relative to liability for hazardous materials accidents.

DATE: 5/13/03

LOB ROOM: 303

Amendments:

Sponsor: Rep. *P. Allen*

OLS Document #: 2003-1503h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions:  OTP  OTP/A,  ITL, Interim Study (Please circle one.)

Moved by Rep. *P. Allen*

Seconded by Rep. *J. Mueller*

Vote: 12-0 (Please attach record of roll call vote.)

Motions:  OTP  OTP/A  ITL, Interim Study (Please circle one.)

Moved by Rep. *P. Allen*

Seconded by Rep. *J. Mueller*

Vote: 12-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.) *Regular Calendar*

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Patricia C. Dunlap, Clerk



**ENVIRONMENT AND AGRICULTURE**

Bill #: SB 136 Title: Relative to liability for hazardous materials accidents

PH Date: 4/22/03 Exec Session Date: 5/13/03

Motion: 050/A Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Musler, George T. Chairman	✓	
Babson, David L. V Chairman	Absent	
Messier, Irene M	Absent	
Pratt, Leighton C	✓	
Philbrick, Donald R	✓	
Dunlap, Patricia C	✓	
Williams, Burton W	Absent	
Varrell, Thomas A	Absent	
Olimpio, J Lisbeth	✓	
Ahern, Omer C	✓	
Allen, Timothy J	✓	
Cernota, Albert C	✓	
Foley, Albert	Absent	
Hansen, Rvan N	Absent	
Scott, David N	Absent	
Phinizy, James G	✓	
Owen, Derek	✓	
Allen, Peter H	✓	
Slack, Pamela R	Absent	
Diamond, Estelle	Absent	
Rous, Emma L	✓	
TOTAL VOTE:	12	0

# Committee Report



# COMMITTEE REPORT

COMMITTEE: **Environment and Agriculture**

BILL NUMBER: **SB 136**

TITLE: relative to liability for hazardous materials accidents.

DATE: May 13, 2003

CONSENT CALENDAR YES  NO

- OUGHT TO PASS
- OUGHT TO PASS WITH AMENDMENT
- INEXPEDIENT TO LEGISLATE
- REFER TO COMMITTEE FOR INTERIM STUDY  
(Available only in second year of biennium.)

## STATEMENT OF INTENT (Include Committee Vote)

The wording in the existing RSA 154:8-A requires an actual discharge before a person can be found liable to reimburse hazardous materials cleanup expenses. The senate version expands liability to cover threatened discharges, and the house amendment provides coverage for reasonable and proportionate response by police, fire, and emergency equipment and personnel.

Vote 12-0.

Rep. Timothy J. Allen  
FOR THE COMMITTEE

Original: House Clerk  
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Environment and Agriculture

**SB 136**, relative to liability for hazardous materials accidents. **OUGHT TO PASS WITH AMENDMENT**

Rep. Timothy J. Allen for Environment and Agriculture: The wording in the existing RSA 154:8-A requires an actual discharge before a person can be found liable to reimburse hazardous materials cleanup expenses. The senate version expands liability to cover threatened discharges, and the house amendment provides coverage for reasonable and proportionate response by police, fire, and emergency equipment and personnel. **Vote 12-0.**

# COMMITTEE REPORT

COMMITTEE: ENVIRONMENT & AGRICULTURE  
BILL NUMBER: SB 136  
TITLE: An act relative to liability for hazardous materials accidents  
DATE: 5-6-03 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS  
 OUGHT TO PASS W/ AMENDMENT  
 INEXPEDIENT TO LEGISLATE  
 RE-REFER  
 INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
2003-1503h

## STATEMENT OF INTENT:

*The wording in the existing RSA 154:8-A requires an actual discharge before a person can be found liable to reimburse hazardous materials cleanup expenses. The senate version expands liability to cover threatened discharges, and the house amendment provides coverage for reasonable and proportionate response by police, fire, and emergency equipment and personnel.*

*L 5/6*

COMMITTEE VOTE: 12-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Timothy Allen  
For the Committee