

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

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~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

Committee Minutes

Date: March 19, 2003
Time: 10:45 a.m.
Room: 104 LOB

The Senate Committee on Environment held a hearing on the following:

SB136 relative to liability for hazardous materials accidents.

Members of Committee present: Senator Johnson
Senator Cohen
Senator Barnes
Senator Below
Senator Prescott

The Chair, Senator Carl R. Johnson, opened the hearing.

Senator Carl R. Johnson, D. 3: I open the hearing on SB136 and call on the prime sponsor, Senator Prescott.

Senator Russell E. Prescott, D. 23: Thank you.

Senator Carl R. Johnson, D. 3: Thank you Senator Prescott.

Senator Russell E. Prescott, D. 23: Thank you. I am Russell Prescott, Senator from the Exeter area. I have an issue that happened, I believe it was on Route 125 in Brentwood, that there was a response requested for a hazardous materials accident. There was an accident that may have been a oil delivery truck. It may have been a LP gas delivery truck or, who knows what it might have been, that happened to go off the road.

According to liability concerning hazardous materials accidents, any person whose act or omission caused the actual discharge of hazardous materials or toxic waste will pay for this response call. This response call didn't end up in an actual discharge of hazardous waste. The truck may have rolled over or an incident like that but it didn't spill. However, the expense of responding is now not incurred by the insurance company. It is incurred by the responder, or the Town.

So this Bill tries to rectify that. We can discuss how it is written, is that it adds the language, "or threatened" discharge of hazardous materials. Not

815

just the actual account that it happened, or threatened. They get a call and they say, "hey there is a threat of a hazardous material". We don't know if it happened or not, they want you to get out here and make sure that if it has happened, you clean it up as quick as possible. If it hasn't happened yet, be here so that if it does happen you can clean it up and if it hasn't happened at all, we go, phew, thank you very much for coming out and making sure the environment is protected. After that is done, who pays the bill? Who pays the cost of the responding is what this Bill is trying to address. Do we, as a committee, believe that the response should be part of the liability or just the actual discharge to be part of the liability absorbed by the insurance company. I have better people addressing this issue of those who want to speak after me, but that is the intent of the Bill.

Senator Carl R. Johnson, D. 3: Senator Prescott. Just last week in Meredith we had a situation where there was a spill and they had to shut down the street which caused some aggravation for some of the businesses there and they had two police cruisers there for a better part of a day because they had to wait to identify what the material was and so forth. It turned out that it was prepping ink that they felt was non-toxic, non-hazardous. So, is this where a threatened discharge of hazardous material, does that cover something like that or?

Senator Russell E. Prescott, D. 23: I don't believe it would. If they found out it wasn't hazardous.

Senator Carl R. Johnson, D. 3: Yes. Okay.

Senator Russell E. Prescott, D. 23: But again, I rely on others that might testify.

Senator Carl R. Johnson, D. 3: Senator Cohen.

Senator Burton J. Cohen, D. 24: Thank you. I will ask later about how the word "threatened" is defined, but my question now is, to your knowledge do insurance companies cover if there is a roll over but there is no stuff that is discharged? Do we know if the insurance company will cover those expenses because it is a threatened spill?

Senator Russell E. Prescott, D. 23: It is my understanding that they don't. They live by the discharge word. If there was no hazardous material discharged, then they aren't going to cover the incident.

Senator Burton J. Cohen, D. 24: My follow up to that, then the driver, him or herself, might be the one that has to pay?

813

Senator Russell E. Prescott, D. 23: I believe that wherever the responders came from, they pay. If they are employed by a Town or they are, the responders pay. That is what I believe.

Senator Burton J. Cohen, D. 24: Thank you.

Senator Carl R. Johnson, D. 3: Senator Barnes.

Senator John S. Barnes, Jr., D. 17: Thank you Mr. Chairman. So what you are saying Senator is that if there is no spill, people who had the truck pay. Not the town.

Senator Russell E. Prescott, D. 23: No. I believe what is going on now is the people who respond do not get reimbursed so they pay, because there was not an actual discharge.

Senator John S. Barnes, Jr., D. 17: Who is they? The people that respond pay?

Senator Russell E. Prescott, D. 23: Yes.

Senator John S. Barnes, Jr., D. 17: So the Town in this case, Brentwood, would have been charged for responding.

Senator Russell E. Prescott, D. 23: Yes. That expense that was incurred.

Senator John S. Barnes, Jr., D. 17: So, what you are trying to do is whether it spills or it doesn't spill the town shouldn't be socked with the bill.

Senator Russell E. Prescott, D. 23: You call us, we respond, we would like to see that that is reimbursed, that expense.

Senator John S. Barnes, Jr., D. 17: Because the truck went off the road for some reason, okay, so the Town, City, whatever it might be, isn't going to be held liable.

Senator Russell E. Prescott, D. 23: Right.

Senator John S. Barnes, Jr., D. 17: Second question. Senator Johnson brought it up and I went through this a few years ago on Route 101. There was a rollover and it greatly affected my business. As a matter of fact it wiped out about three quarters of my daily receipts and I believe it was a Saturday. Do the businesses have any recourse in this? I understand the

Town did, I didn't pursue it but I understand the businesses did have a recourse on something like this.

Senator Russell E. Prescott, D. 23: Don't know on this Bill.

Senator John S. Barnes, Jr., D. 17: Thank you.

Senator Carl R. Johnson, D. 3: Senator Prescott?

Senator Russell E. Prescott, D. 23: Yes.

Senator Carl R. Johnson, D. 3: I am trying to, these legal ease terms I am not very swift on, any person whose act or omission, what is omission? An omission of? Can you interpret that for me?

Senator Russell E. Prescott, D. 23: A person who forgot to take a left turn when the road turned left.

(laughing)

Senator Carl R. Johnson, D. 3: Thank you.

Senator John S. Barnes, Jr., D. 17: That is a good omission.

Senator Carl R. Johnson, D. 3: Any further questions for Senator Prescott? Thank you.

Senator Russell E. Prescott, D. 23: Thank you very much.

Senator Carl R. Johnson, D. 3: Representative Welch is a co-sponsor and I guess he is not here. We have David Minnis with us this morning. Good morning David.

David Minnis, NH Fire Chiefs: Good morning Mr. Chairman. Thank you Mr. Chairman, for the record my name is David Minnis and I am here representing the NH Association of Fire Chiefs and we want to thank Senator Prescott for introducing this Bill for us. It was my client who asked for this Bill to be introduced and I would like to expand a little bit on what Senator Prescott said. I don't have the statute in front of me.

This program was set up a number of years ago by the State to reimburse communities when, for responding to hazardous materials accident or incident. In the front section of the Bill, the word "threatening" is used. However, in the actual statute, which is what you have in front of you, the

word threatening was left out. So, what we are trying to do is put the word "threatened incident" back in the actual statute. Here is what happens. When there is an incident like the one in Brentwood or the one that you had up in Meredith, and the hazardous material response team responds, there are certain expenses incurred in just responding. If it is an actual hazardous material incident, it is covered and the Town, the hazardous materials responders, are reimbursed by the insurance company who is covering, who is ultimately responsible for it. There is a committee that has been set up so that if there is any dispute between what the hazardous response team charges for the incident. If the insurance company disagrees, they think that it is too high or too low, there is a committee that has been set up that looks at it.

A couple of years ago the Department of Safety was charged with the responsibility of setting some standards for reimbursement for the State so that we didn't have one State charging an insurance company \$10,000.00 for an incident and another community charging \$100,000.00. So, we have got some standards out there. The insurance industry has been involved in setting those standards so everything is set. The problem comes in, is that that only works if there is an actual incident involving hazardous material. If there is no actual hazardous material involved in the incident then what the committee does is, it denies. In your case Senator in Meredith, if there was not hazardous material it is not reimbursable. So, nobody is going to get compensated. Those police officers that the Town had to pay for to, you know, block the street off, that is going to be absorbed by the town. It is not a reimbursable expense. So, what we have tried to with just inserting these two words "or threatened" is, if the hazardous materials response teams for our community are called out because it is a threatened incident, then they ought to be reimbursed even if it turns out not to be.

I did some research in that I asked a number of communities, what is your average cost when you have to roll up? Some expenses are incurred regardless. There is some equipment that they have to use. They have to break open and use and the average cost is between \$3500.00 and \$7000.00 just to roll out to an incident and that is what we are seeking to be reimbursed for. Otherwise, the towns have to absorb this. Every time we have to roll out, it costs between \$3500.00 and \$7000.00. That is the purpose of the Bill and the reason why we bring it before you is to put the words "or threatened" in the actual statute. So that there will be no question now if we have to respond because it is a threatened incident, that is a reimbursable expense by the insurance company that is ultimately liable. Somebody is covering.

Senator Carl R. Johnson, D. 3: Most of the small towns, obviously don't have a hazardous waste team.

David Minnis, NH Fire Chiefs: No they don't. We have six regions right now.

Senator Carl R. Johnson, D. 3: Yes. Depending on some of the spills, some of these hazardous waste teams could come as far away as Boston.

David Minnis, NH Fire Chiefs: I don't believe so Senator.

Senator Carl R. Johnson, D. 3: No.

David Minnis, NH Fire Chiefs: No. We have, the State has been divided up into six hazardous materials response areas, if you will. The communities in that area and I was hoping that Lee Kimball from the Office of Emergency Management would be here to help me but we are in Orange Alert and so he has some responsibilities right now that prevented him from being here. We have six materials response teams, if you will. Each community is a part of that. So, if it is a major incident, we are going to call out that hazardous materials response team. Now, the first responders might be the local community. They are the ones that are going to make the assessment whether this is something that they can handle and deal with with their community response team or whether it is something that is going to have to bring in the hazardous materials response team. For instance, one of the LP tankers were to tip over on the B&M railroad, that would initiate a regional response. You would have a whole bunch of responsibilities at that point. But, a local one might be the local community that responds to it.

Senator Carl R. Johnson, D. 3: Thank you. Senator Cohen.

Senator Burton J. Cohen, D. 24: A couple of quick questions. So, if I heard you correctly, the word "threatening" is in the preceding paragraph?

David Minnis, NH Fire Chiefs: Yes. But it is not in this section. This is where it needs to be and the reason we are here is because we have had in the last year, four or five incidences that turned out not to involve and when the local fire chief went to go get reimbursed, they were denied because it wasn't an actual incident.

Senator Burton J. Cohen, D. 24: I understand. My follow up question then is one that I had asked Senator Prescott, so that if there is an incident, a threatened incident if something spills over, does the insurance company if

this were to become law who would shoulder the burden to pay for it? Would it be the insurance company or does it vary from situation to situation?

David Minnis, NH Fire Chiefs: If there is or isn't an actual hazardous material spill.

Senator Burton J. Cohen, D. 24: If this were to become law and there was a threatened spill, who then would be the responsible party for paying it?

David Minnis, NH Fire Chiefs: The insurance company.

Senator Burton J. Cohen, D. 24: That cover these companies?

David Minnis, NH Fire Chiefs: Right. Well, let's just take the incident that Senator Prescott was referring to. We had an oil tanker that tipped over. It went off the road and it tipped over. It is an oil tanker. Nobody knew. Pick up the phone, 911, boom, emergency response went out there. They did what they had to do to isolate it. It turned out that, that tanker, that oil truck had liability coverage. It turned out when they got in there that there was no spill. Nothing had leaked out. When we went, when my client went to get reimbursed, denied. Under this, they would have been reimbursed. If this is passed they would be reimbursed.

I am not answering your question.

Senator Burton J. Cohen, D. 24: I am just trying to nail it down. Do the insurance companies in their legal areas, is there something like the word threatening in there or could the burden of paying for it, in that situation, where it is a threatened situation, no spill actually occurred, could it fall on the driver of the vehicle? Or would he or she be covered, do we know this?

David Minnis, NH Fire Chiefs: I don't know this but I would assume that the driver is covered under the companies liability coverage policy. I mean it is the companies that have to carry the liability insurance. I mean, if the driver, for instance DWI, I mean if he were, the insurance company would still be responsible because it was there truck. It is the companies truck, not the individual drivers. But you might be able to get the driver for something else. It would be the company that is providing hazardous material coverage for the oil truck.

Senator Carl R. Johnson, D. 3: Senator Barnes.

Senator John S. Barnes, Jr., D. 17: Yes. Thank you. Are there any people signed up from any insurance companies to talk on this Bill.

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Senator Carl R. Johnson, D. 3: No.

Senator John S. Barnes, Jr., D. 17: David, what do you think the insurance companies, how much are they going to raise their rates if this passes?

David Minnis, NH Fire Chiefs: I don't know if it is going to raise their rates at all, Senator. You would have to ask them. I mentioned it to George Russo that we were doing this. I don't know whether George is the right person but.

Senator John S. Barnes, Jr., D. 17: I would certainly think.

David Minnis, NH Fire Chiefs: They are not here.

Senator John S. Barnes, Jr., D. 17: You are talking \$3500 to 7000.00 for an incident.

David Minnis, NH Fire Chiefs: Right.

Senator John S. Barnes, Jr., D. 17: The insurance company. If I own a truck company, my rates are going to go up. They are going to have to go up. The insurance company is not going to give that to me if this law passes and I would like to know how much it is going to increase because I might not be from a company, I might be Jack and Burt and we might own one truck and the two of us are working as independents and we have this insurance, and we tip over and we have a problem.

David Minnis, NH Fire Chiefs: My recollection is that if you are transporting a hazardous material, there are minimum insurance coverage's that you must have. I am talking a million dollars and above and that is just mandatory and I think that it is, I am sorry DES is not here. It is either in DES regs or it is transportation's regs. I mean, these vehicles are on the road all the time. Please understand this only applies if there is a response to a hazardous materials incident. It would not, for instance cover if two cars have an accident and the gas tank of one of cars breaks apart and there is a spillage of gasoline on the road. It is not going to cover it. This is not going to effect that kind of an incident.

Senator John S. Barnes, Jr., D. 17: If the team comes out for an automobile accident, as in Brentwood because of the blinking light where there is a number of accidents, there is a possibility of a spill if two cars come together. The Town of Brentwood would come out and what if there was no spill?

David Minnis, NH Fire Chiefs: It wouldn't cover it.

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Senator John S. Barnes, Jr., D. 17: Why?

David Minnis, NH Fire Chiefs: Because it doesn't raise, this is why I wish I had somebody else here. Because it doesn't raise to the level of being a hazardous materials incident.

Senator John S. Barnes, Jr., D. 17: We just went through in committee last week with mercury in headlights being hazardous.

David Minnis, NH Fire Chiefs: I wasn't here for that.

Senator John S. Barnes, Jr., D. 17: Well, if the mercury headlights, the break and it gets into the pond and we kill off all of the fish in the pond. I was wondering why that wouldn't cover it. You haven't got the answer I understand.

David Minnis, NH Fire Chiefs: We did attempt. I mean, they are aware of this and I don't see anybody here.

Senator John S. Barnes, Jr., D. 17: I appreciate your effort.

David Minnis, NH Fire Chiefs: We would like to see you pass this.

Senator Carl R. Johnson, D. 3: Any further questions for David?

David Minnis, NH Fire Chiefs: Thank you very much.

Senator Carl R. Johnson, D. 3: That is the only two that have signed up on SB136. Is there anyone else that would like to speak on SB136? Hearing none, we will close the Bill on SB136.

Senator John S. Barnes, Jr., D. 17: Mr. Chairman, may I ask that the sponsor see if he could get a couple of answers for us?

Senator Russell E. Prescott, D. 23: If I add to the protocols for when you call in the hazardous response team would that be enough for you?

Senator John S. Barnes, Jr., D. 17: I want to know what it is going to cost Burt and Jack in insurance costs.

Senator Russell E. Prescott, D. 23: If we let you know that it was a way that further scrutiny of the law gave the insurance company a loophole to get

out of this responsibility and it really should not effect the cost at all, you might allow that?

Senator John S. Barnes, Jr., D. 17: I don't want loopholes of people getting out of their responsibilities.

Senator Burton J. Cohen, D. 24: I just want to know if the insurance people feel that with the threatened thing is something they would find okay with that. In particular the trucking company or the driver for that matter.

Senator John S. Barnes, Jr., D. 17: Dave was talking about a million dollars so if Burt and I had that coverage we aren't going to worry about it. Obviously it in that policy if we are paying big bucks for that policy anyway. That would take care of my situation but if we are paying \$10,000.00 for our policy and it is going to cost us \$15,000.00 I would like to know that.

Senator Burton J. Cohen, D. 24: I think I would like to know.

David Minnis, NH Fire Chiefs: We will also get you what the minimum policy is that you would have to carry.

Senator Carl R. Johnson, D. 3: Yes. I think you mentioned David, about you wish that someone from DES was here. Maybe you could touch base with them or DOT.

David Minnis, NH Fire Chiefs: Sure.

Senator John S. Barnes, Jr., D. 17: Sounds like a great idea and then we can see.

Senator Russell E. Prescott, D. 23: The reason why I even sponsored the Bill because I believe it was the intent of the Bill to cover someone coming out and responding should not pay.

Senator Burton J. Cohen, D. 24: We understand.

Senator John S. Barnes, Jr., D. 17: I understand. Dave mentioned the fact that they left that out in the sections.

Senator Russell E. Prescott, D. 23: That is right.

Senator John S. Barnes, Jr., D. 17: It is a housekeeping measure.

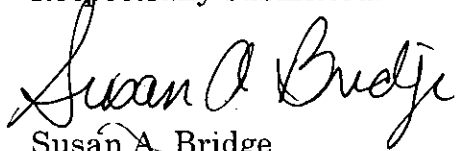
Senator Russell E. Prescott, D. 23: Yes.

Senator Carl R. Johnson, D. 3: So, if you could do that, follow up with that.

Senator Carl R. Johnson, D. 3: We have about five minutes before we hear the next Bill.

Hearing closed at 11:05 p.m.

Respectfully submitted:



Susan A. Bridge
Senate Secretary
March 24, 2003

Speakers

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Environment

to which was referred Senate Bill 136

AN ACT relative to liability for hazardous materials accidents.

VOTE: 5-0

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Russell E. Prescott
For the Committee

[Home](#)[Bill Status](#) ◆[Members](#) ◆[Calendars/Journals](#) ◆[Miscellaneous](#) ◆

SB136 Docket

[Next](#)|[Prev](#)|[Results List](#)|[Main](#)|[Bill Status](#)**Bill Title:** relative to liability for hazardous materials accidents.

<u>Date</u>	<u>Body</u>	<u>Description</u>
1/30/2003	S	Introduced and Ref. to Environment; SJ 3, Pg.37
2/7/2003	S	Hearing; === CANCELLED === March 5, 2003, Room 104, LOB, 11:00 a.m.; SC9
2/21/2003	S	Hearing; === RESCHEDULED === March 19, 2003, Room 104, LOB, 10:45 a.m.; SC11
4/4/2003	S	Committee Report; Ought to Pass, [04/10/03]; SC17
4/10/2003	S	Ought to Pass, MA, VV; OT3drg; SJ 12, Pg.277
4/10/2003	S	Passed by 3rd Reading Resolution; SJ 12, Pg.310
4/10/2003	H	Introduced and ref to Env & Agric; HJ 34, p1145
4/15/2003	H	Hearing Apr 22 10:00 RM303,LOB
4/22/2003	H	Subcom work session Apr 29 10:00 RM303,LOB
5/13/2003	H	Maj Report OTP/AM for May 29 (Vote 12-0;Reg)
5/13/2003	H	Prop Comm Am{1503}; HC 43, p1384
5/29/2003	H	Comm Am, AA VV; Passed with Am VV; HJ 45, p1460 + 1477
6/5/2003	S	Sen. Johnson Concur with House Amendment, MA, VV; SJ 19, Pg.527
6/24/2003	S	Enrolled; SJ 20, Pg.828
6/24/2003	H	Enrolled;
6/30/2003	S	Signed by the Governor on 6/30/2003 Eff- 1/1/2004 Chap- 0209

[Next](#)|[Prev](#)|[Results List](#)|[Main](#)|[Bill Status](#)*Docket Abbreviations*