

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 16-0474.01 Thomas Morris x4218

**HOUSE BILL 16-1046**

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**HOUSE SPONSORSHIP**

**Kraft-Tharp,**

**SENATE SPONSORSHIP**

**Baumgardner,**

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**House Committees**  
Local Government

**Senate Committees**  
Local Government

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**A BILL FOR AN ACT**

101 **CONCERNING THE RESPONSE TO HAZARDOUS SUBSTANCE INCIDENTS**  
102 **UNDER DESIGNATED EMERGENCY RESPONSE AUTHORITY**  
103 **RESPONSIBILITY.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

Under current law, each county and municipality must designate an emergency response authority that is responsible for responding to releases of hazardous substances within that jurisdiction. The bill specifies that:

! The local government must annually report the designation

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

SENATE  
3rd Reading Unamended  
March 10, 2016

SENATE  
Amended 2nd Reading  
March 9, 2016

HOUSE  
3rd Reading Unamended  
February 2, 2016

HOUSE  
2nd Reading Unamended  
February 1, 2016

to the hazardous materials section of the Colorado state patrol; the appropriate response is narrowed to include threats of adverse effects on human health or the environment; and emergency response authorities may provide their response capability through an agreement with a private entity (**section 1** of the bill);

- ! Private entities that are neither a responsible party nor otherwise compensated may claim reimbursement of specified response costs when they provide services under an agreement with the designated emergency response authority or fire department (**section 3**); and
- ! The obligation to report the presence of a hazardous substance on one's property does not apply if the substance is in typical consumer-sized packaging or when being stored or used by a farmer or rancher at a facility used in active agricultural production (**section 4**).

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 29-22-102, **amend**  
3 (1), (2), and (3) as follows:

4 **29-22-102. Hazardous substance incidents - response**  
5 **authorities - designation - definition.** (1) It is the purpose of this  
6 section to provide for the designation of emergency response authorities  
7 for hazardous substance incidents. Every emergency response authority  
8 designated in or pursuant to this section ~~shall be~~ IS responsible for  
9 providing and maintaining the capability for emergency response to a  
10 hazardous substance incident occurring within its jurisdiction. An  
11 emergency response authority may provide and maintain the capability for  
12 such response directly or through mutual aid or other agreements,  
13 INCLUDING AN AGREEMENT WITH A PRIVATE ENTITY TO SUPPORT THE  
14 EMERGENCY RESPONSE AUTHORITY, RESPONDING FIRE DEPARTMENTS, OR  
15 OTHER GOVERNMENT AGENCIES. Subject to the provisions of local or  
16 regional response agreements for hazardous substance incidents, the first

1 emergency response authority, or its public agency designee through  
2 mutual aid or otherwise, to arrive at the scene of the incident, regardless  
3 of whether the incident occurs within its jurisdiction, ~~shall be~~ IS  
4 responsible for the emergency response as incident commander until such  
5 time as the emergency response authority that has jurisdiction over the  
6 incident site has arrived, after which unified command shall be followed  
7 until the emergency response has concluded. As used in this section,  
8 "emergency response to a hazardous substance incident" means taking the  
9 initial emergency action necessary to minimize the effects OR THREAT OF  
10 ADVERSE EFFECTS of a hazardous substance incident ON HUMAN HEALTH  
11 OR THE ENVIRONMENT.

12 (2) If a hazardous substance incident occurs on private property  
13 and is otherwise reportable to any federal, state, or local agency, the  
14 owner of the property or person or entity operating on the property shall  
15 promptly report the incident to and coordinate a response with the  
16 appropriate emergency response authority designated in or pursuant to  
17 this section. If the owner or operator does not undertake or coordinate an  
18 emergency response or if, in the judgment of the designated emergency  
19 response authority, there exists an imminent danger to ~~the public~~ HUMAN  
20 health ~~and safety~~ OR THE ENVIRONMENT beyond such property, the  
21 designated emergency response authority may undertake the emergency  
22 response to such hazardous substance incident, as provided in this section.  
23 Nothing in this subsection (2) shall be construed to prohibit the owner of  
24 private property or a person or entity operating on such property from  
25 undertaking the emergency response to a hazardous substance incident  
26 occurring on the property.

27 (3) (a) The governing body of every town, city, and city and

1 county shall designate by ordinance or resolution an emergency response  
2 authority or authorities for hazardous substance incidents occurring  
3 within the corporate limits of such town, city, and city and county. THE  
4 GOVERNING BODY SHALL ANNUALLY REPORT THE DESIGNATION TO THE  
5 HAZARDOUS MATERIALS SECTION OF THE COLORADO STATE PATROL.  
6 Unless otherwise designated by ordinance or resolution, the fire authority  
7 ~~having responsibility~~ RESPONSIBLE for the AREA WITHIN THE corporate  
8 limits of such town, city, or city and county ~~shall be~~ IS the designated  
9 emergency response authority.

10 (b) The board of county commissioners of every county in the  
11 state shall designate by ordinance or resolution the emergency response  
12 authority or authorities for hazardous substance incidents occurring  
13 within the unincorporated area of the county. THE BOARD SHALL  
14 ANNUALLY REPORT THE DESIGNATION TO THE HAZARDOUS MATERIALS  
15 SECTION OF THE COLORADO STATE PATROL. Unless otherwise designated  
16 by ordinance or resolution, the county sheriff ~~having responsibility~~  
17 RESPONSIBLE for the unincorporated area of the county ~~shall be~~ IS the  
18 designated emergency response authority.

19 (c) (Deleted by amendment, L. 99, p. 432, § 1, effective April 30,  
20 1999.)

21 **SECTION 2.** In Colorado Revised Statutes, 29-22-103, **amend**  
22 (3) as follows:

23 **29-22-103. Emergency response authority may request**  
24 **assistance.** (3) Any municipal or county governing body, ~~any~~ emergency  
25 response authority, ~~any~~ private entity, the Colorado state patrol, or the  
26 department of public safety may enter into mutual aid or other agreements  
27 for the purpose of ~~enhancing the~~ PROVIDING OR CONDUCTING THE

1 EMERGENCY response to hazardous substance incidents. Such agreements  
2 may include ~~but are not limited to~~, procedures for utilizing equipment,  
3 personnel, and technical assistance.

4 **SECTION 3.** In Colorado Revised Statutes, 29-22-104, **amend**  
5 (1) and (3) (b) as follows:

6 **29-22-104. Right to claim reimbursement - rules.** (1) (a) A  
7 public entity, political subdivision of the state, ~~or~~ unit of local  
8 government, OR PRIVATE ENTITY is hereby given the right to claim  
9 reimbursement from the person or persons who have care, custody, and  
10 control of the hazardous substance involved at the time of the incident for  
11 the reasonable, necessary, and documented costs resulting from action  
12 taken to remove, contain, or otherwise mitigate the effects of ~~such~~ THE  
13 incident. A PRIVATE ENTITY THAT IS NEITHER A RESPONSIBLE PARTY NOR  
14 OTHERWISE COMPENSATED MAY CLAIM ITS COSTS ONLY WHEN IT PROVIDED  
15 SERVICES UNDER AN AGREEMENT WITH THE DESIGNATED EMERGENCY  
16 RESPONSE AUTHORITY OR FIRE DEPARTMENT PURSUANT TO SECTION  
17 29-22-102 OR 29-22-103 THAT PROVIDES THAT THE PRIVATE ENTITY WILL  
18 NOT BE PAID BY THE DESIGNATED EMERGENCY RESPONSE AUTHORITY OR  
19 FIRE DEPARTMENT. A PRIVATE ENTITY MAY ASSIST A FIRE DEPARTMENT OR  
20 DESIGNATED EMERGENCY RESPONSE AUTHORITY IN PURSUING SUCH A  
21 CLAIM UNDER SUBSECTION (3) OF THIS SECTION; HOWEVER, THE FIRE  
22 DEPARTMENT OR DESIGNATED EMERGENCY RESPONSE AUTHORITY MUST  
23 APPROVE THE CLAIM. When the action to remove, contain, or otherwise  
24 mitigate the effects of such an incident also involves extinguishing a fire,  
25 the costs may only include the extraordinary expenses related to the  
26 hazardous substance and not any expense related to extinguishing the fire.  
27 If the property on which the hazardous substance incident occurred lies

1 within an unincorporated area of a county and not otherwise within a fire  
2 protection district, then the costs may include any expense related to the  
3 hazardous substance incident or to extinguishing the fire. If any such  
4 person is the owner of property upon which the hazardous substance  
5 incident occurs, collection of such costs may be made pursuant to section  
6 30-10-513.5 (1), C.R.S.

7 (b) RESPONSE COSTS RECOVERABLE UNDER THIS SECTION INCLUDE  
8 THE VALUE OF REASONABLE EMERGENCY RESPONSE SERVICES PROVIDED  
9 BY A PRIVATE ENTITY UNDER AN AGREEMENT FOR ASSISTANCE WITH A FIRE  
10 DEPARTMENT OR THE DESIGNATED EMERGENCY RESPONSE AUTHORITY  
11 REGARDLESS OF WHETHER THE PRIVATE ENTITY HAS BEEN PAID BY THE  
12 FIRE DEPARTMENT OR DESIGNATED EMERGENCY RESPONSE AUTHORITY.

13 (3) (b) Any collections or recovery made by the emergency  
14 response authority shall be distributed on a pro rata basis among the  
15 agencies ~~which~~ AND PRIVATE ENTITIES THAT rendered assistance.

16 **SECTION 4.** In Colorado Revised Statutes, 29-22-107, **amend**  
17 (2) (d) introductory portion and (2) (d) (II) as follows:

18 **29-22-107. Legislative finding - hazardous substance listing**  
19 **required.** (2) (d) The requirements of this subsection (2) ~~shall~~ DO not  
20 apply to:

21 (II) Hazardous substances ~~located on residential, personal, or~~  
22 ~~agricultural property~~ IN TYPICAL CONSUMER-SIZED PACKAGING OR WHEN  
23 BEING STORED OR USED BY A FARMER OR RANCHER AT A FACILITY USED IN  
24 ACTIVE AGRICULTURAL PRODUCTION;

25 **SECTION 5. Applicability.** This act applies to conduct occurring  
26 on or after the effective date of this act.

27 **SECTION 6. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.