

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2137
(Political Subdivisions Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-17.1-02, 37-17.1-02.1, and 37-17.1-04, subsections 3 and 6 of section 37-17.1-06, subsections 3 and 4 of section 37-17.1-07, subsections 1 and 2 of section 37-17.1-07.1, subsection 3 of section 37-17.1-11, subsection 1 of section 37-17.1-12, section 37-17.1-13, subsections 2 and 4 of section 37-17.1-14.2, sections 37-17.1-19, 37-17.1-20, 37-17.1-21, and 37-17.1-24, subsections 1 and 3 of section 37-17.1-25, and section 57-15-28 of the North Dakota Century Code, relating to the department of emergency services and the North Dakota Disaster Act of 1985.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-02. Purposes. The purposes of this chapter are to:

1. Reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or manmade disasters or emergencies, threats to homeland security, or hostile military or paramilitary action.
2. Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters or emergencies.
3. Clarify the roles of the governor, state agencies, and local governments in prevention of, in mitigation of, preparation for, ~~and~~ response to, and recovery from disasters or emergencies.
4. Authorize and provide for coordination of emergency management activities by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate.
5. Provide for a statewide emergency management system embodying all aspects of prevention, mitigation, preparedness, response, and recovery and incorporating the principles of the national incident management system and its incident command system, as well as other applicable federal mandates.

SECTION 2. AMENDMENT. Section 37-17.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-02.1. Department of emergency services. The department of emergency services consists of a division of state radio and a division of homeland security. The adjutant general is the director of the department. The adjutant general shall provide for shared administration of both divisions. The division of homeland security consists of the state emergency operations center section, the disaster recovery section, and the homeland security section. The adjutant general shall appoint a separate director of each division. A division director serves at the pleasure of the adjutant general. The adjutant general shall fix the compensation of a division director within limits of legislative appropriation.

SECTION 3. AMENDMENT. Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-04. Definitions. As used in this chapter:

1. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, ~~or~~ chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
2. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision.
3. "Emergency" means any situation that is determined by the governor to require state or state and federal response or mitigation actions to immediately supplement local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.
4. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to prevent, mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
5. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.
6. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
7. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.
8. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.

SECTION 4. AMENDMENT. Subsections 3 and 6 of section 37-17.1-06 of the North Dakota Century Code are amended and reenacted as follows:

3. The division of homeland security shall ~~take an integral part in~~ provide technical assistance for the development and revision of local disaster or emergency operations plans prepared under section 37-17.1-07. ~~To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to local emergency management organizations. These personnel shall consult with local emergency management organizations on a regularly scheduled basis and shall make field examinations of the areas, circumstances, and conditions to which particular local disaster or emergency plans are intended to apply and may suggest or require revisions.~~
6. The division of homeland security, in coordination with lead and support agencies, shall:

- a. Coordinate the procurement ~~and prepositioning~~ of supplies, materials, and equipment ~~for during~~ disaster or emergency operations.
- b. Provide guidance and standards for local disaster or emergency operational plans.
- c. Periodically review local disaster or emergency operational plans.
- d. Coordinate state or state and federal assistance to local emergency management organizations.
- e. Establish and operate or assist local emergency management organizations to establish and operate training programs and programs for emergency public information.
- f. Make surveys of industries, resources, and facilities, within the state, both public and private, as are necessary to carry out the purposes of this chapter. The use of sensitive and proprietary logistical data submitted to the state in confidence by individual industries and suppliers must be accorded full confidentiality and will be released only in aggregate form.
- g. Plan and make arrangements for the availability and use of any private facilities, services, and property, and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.
- h. Establish access to a register of persons with types of training and skills important in prevention, mitigation, preparedness, response, and recovery.
- i. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
- j. Prepare, for issuance by the governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
- k. Coordinate ~~and may enter agreements~~ with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster mitigation, preparation, response, and recovery.
- l. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization ~~in carrying out the search for and rescue of persons when no violation of criminal laws exists.~~
- m. Do other things necessary, incidental, or appropriate for the implementation of this chapter.

SECTION 5. AMENDMENT. Subsections 3 and 4 of section 37-17.1-07 of the North Dakota Century Code are amended and reenacted as follows:

- 3. Each city shall provide an emergency management organization of its own, or it shall participate in the countywide emergency management organization. Each governing board of a city shall make its determination on the basis of the city's emergency management requirements, hazards, capabilities, and resources. ~~The division of homeland security shall publish and keep current a list of cities desiring to have an emergency management organization of their own.~~ If a city provides an emergency management organization of its own, the city and county shall coordinate the city and county emergency plans.
- 4. The mayor of or the president of the board of city commissioners in a city or with an emergency management organization and the chairman of the board of county

commissioners shall notify the division of homeland security of the manner in which the city ~~or and the county is~~ are providing or securing emergency management activities, identify ~~the person~~ each individual who will coordinate the activities of the local emergency management organization, and furnish additional information relating thereto as the division requires.

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 37-17.1-07.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Program components.

- a. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.
- b. In conjunction with the state emergency response commission, the local emergency planning committees, as appointed by the boards of county commissioners, and the local emergency management organizations, ~~the division of homeland security~~ shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
- c. The director of the division of homeland security shall serve as the chairman of the state emergency response commission. In the absence of the chairman, the designated vice chairman shall serve as chairman. The state emergency response commission by vote will select the vice chairman to fulfill a two-year term. The chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of homeland security.
- d. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.

2. Establishment of funds.

- a. There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the general assembly. Moneys in the fund shall be appropriated biennially to the division of homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
- b. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR

355.20 or its successor which is required under section 312 of SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is one hundred fifty dollars. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.

- d. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
- e. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response ~~program~~ programs to include training, exercising, equipment, response, and salaries.
- f. "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.
- g. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.

SECTION 7. AMENDMENT. Subsection 3 of section 37-17.1-11 of the North Dakota Century Code is amended and reenacted as follows:

- 3. If the division of homeland security determines, in coordination with lead and support agencies, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning; existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster or emergency; and changes in zoning regulations, other land use regulations, or building requirements are needed in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor, upon review of the determination, finds after public hearing, that the changes are essential, the governor shall so recommend to the agencies or local governments with jurisdiction over that area and subject matter. If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the legislative assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency.

SECTION 8. AMENDMENT. Subsection 1 of section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

- 1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to effectively prevent, mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered that person's services or property without compensation.

SECTION 9. AMENDMENT. Section 37-17.1-13 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-13. Communications. ~~The division of homeland security~~ department of emergency services shall ascertain what means exist for rapid and efficient communications in times of a disaster or emergency. The ~~division~~ department shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or state and federal telecommunications or other communications system or network, including the military installations. In studying the character and feasibility of any system or its several parts, the ~~division~~ department shall evaluate the possibility of multipurpose use thereof for general state and local governmental purposes. The ~~division~~ department shall make recommendations to the governor as appropriate.

SECTION 10. AMENDMENT. Subsections 2 and 4 of section 37-17.1-14.2 of the North Dakota Century Code are amended and reenacted as follows:

2. The governor may enter into an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster prevention, preparedness, mitigation, response, and recovery.
4. All interstate mutual aid compacts and other interstate agreements to which this state is a party dealing with disaster or emergency prevention, preparedness, response, recovery, or mitigation must be reviewed and made current every four years.

SECTION 11. AMENDMENT. Section 37-17.1-19 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-19. Temporary housing for disaster victims and site acquisition and preparation. ~~In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the~~ The governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a disaster or emergency, a program of temporary housing for disaster victims adversely affected by a disaster or emergency ~~in those cases when such disaster or emergency victims are unable to meet their needs through assistance under provisions other than section 404 of the Disaster Relief Act or through other means.~~ The governor is authorized:

1. To receive temporary housing units to be occupied by disaster or emergency victims from any agency of the United States and to make such units available to any county or city of the state.
2. To assist any county or city of this state which is the site of temporary housing for disaster or emergency victims, to acquire and to prepare sites necessary for such temporary housing, and to "pass through" funds made available by any agency, public or private.

Any county or city of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster or emergency victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

The governor shall establish guidelines necessary to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

SECTION 12. AMENDMENT. Section 37-17.1-20 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-20. Community disaster loans. ~~In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the~~ The governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as

may be necessary to establish, in the event of a presidentially declared "major disaster", a program of community disaster loans in those cases when communities are unable to meet or provide for their essential governmental functions ~~through assistance under provisions other than section 414 of the Disaster Relief Act or through other means~~. Upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a disaster and has demonstrated a need for financial assistance to perform its governmental functions, the governor may apply to the federal government, on behalf of the local government, for a loan and receive and disburse the proceeds of any approved loan to any applicant local government.

The governor may:

1. Determine the amount needed by any applicant local government to restore or resume its governmental functions and certify the same to the federal government. No application amount may exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the disaster occurs.
2. Recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, within three fiscal years following the disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a county or city.

SECTION 13. AMENDMENT. Section 37-17.1-21 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-21. Debris and wreckage removal in disasters or emergencies. ~~In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the~~ The governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a disaster or emergency, a program of debris and wreckage removal caused by a disaster ~~in those cases when such debris and wreckage removal cannot be provided under provisions other than section 403 of the Disaster Relief Act or through other means~~. The governor is authorized:

1. Notwithstanding any other provision of law, through the use of state departments or agencies, or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety, or threaten public or private property, in any disaster or emergency declared by the governor.
2. To accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

Authority under sections 37-17.1-19, 37-17.1-20, and 37-17.1-21 may not be exercised, except upon state-owned lands, unless the affected local government, corporation, limited liability company, organization, or individual first presents an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against any claim arising from such removal.

Whenever the governor provides for clearance of debris or wreckage pursuant to subsection 1 or 2, employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

Except in cases of willful misconduct, gross negligence, or bad faith, any state employee or agent complying with orders of the governor and performing duties pursuant thereto under sections 37-17.1-19, 37-17.1-20, and 37-17.1-21 is not liable for death of or injury to persons or damage to property.

The governor shall establish guidelines to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

SECTION 14. AMENDMENT. Section 37-17.1-24 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-24. Definitions. In this section and section 37-17.1-25, unless the context otherwise requires:

1. "Assisting unit" means an emergency response unit that renders mutual aid assistance to a requesting unit.
2. "Emergency response unit" includes a fire department, law enforcement agency, emergency medical services operation, and any other public, tribal, and private group that responds to a request for assistance at the scene of an incident.
3. "Incident" means any situation that requires actions to immediately protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.
4. "Incident command system" means a ~~recognized system adopted by the United States department of homeland security and the division of emergency management for the command, control, and coordination of resources and personnel at the scene of an incident~~ standardized, on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
5. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
6. "National response plan" means a comprehensive all-hazards approach to enhance the ability of the United States to manage domestic incidents, incorporating best practices and procedures from incident management disciplines and integrating them into a unified structure to guide national support of state and local governments and the private sector.
7. "Requesting unit" means the emergency response unit with responsibility for responding to an incident which seeks mutual aid assistance from another emergency response unit.

SECTION 15. AMENDMENT. Subsections 1 and 3 of section 37-17.1-25 of the North Dakota Century Code are amended and reenacted as follows:

1. An incident ~~command system~~ commander must be designated by the requesting unit, and the incident command system must be used. The incident commander may request mutual aid and is responsible for all resources assigned to or responding to an incident.
3. All resources assigned to an incident are under the ~~command~~ operational control of the incident commander. The individual in charge of an assisting unit may retain the ability to withdraw personnel or resources upon notification to the incident commander. An assisting unit withdrawing from an emergency response operation is not liable for damage to the requesting unit.

SECTION 16. AMENDMENT. Section 57-15-28 of the North Dakota Century Code is amended and reenacted as follows:

57-15-28. Emergency fund - County. The governing body of any county may levy a tax for emergency purposes not exceeding the limitation in subsection 22 of section 57-15-06.7. The

emergency fund may not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes but must be shown in the budget as an "emergency fund" and may not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, must be deposited in the emergency fund, and must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund may not be used for any road construction or maintenance, except for repair of roads damaged by nature within sixty days preceding ~~such~~ the determination to expend emergency funds, or for the purchase of road equipment; however, the emergency fund may be used to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than sixty days preceding the determination. Any unexpended balance, remaining in the emergency fund at the end of any fiscal year, must be kept in ~~such~~ the fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, equals the amount produced by a levy of five mills on the taxable valuation of property in a county with a population of thirty thousand or more, or ten mills on the taxable valuation of property in a county with a population of less than thirty thousand, the levy authorized by this section must be discontinued, and no further levy may be made until required to replenish the emergency fund.