

Introduced by

Government and Veterans Affairs Committee

(At the request of the Adjutant General)

1 A BILL for an Act to amend and reenact section 37-17.1-07.1 of the North Dakota Century  
2 Code, relating to hazardous chemical preparedness and response program fees and fines.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 37-17.1-07.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **37-17.1-07.1. Hazardous chemicals preparedness and response program.**

7 1. Program components.

8 a. The governor shall appoint members of the state emergency response  
9 commission to carry out the commission's responsibilities as outlined in Public  
10 Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the  
11 responsibilities of the commission members as outlined in the North Dakota  
12 emergency operations plan.

13 b. In conjunction with the state emergency response commission, the local  
14 emergency planning committees, as appointed by the boards of county  
15 commissioners, and the local emergency management organizations shall  
16 coordinate the development and maintenance of a state hazardous chemicals  
17 preparedness and response program.

18 c. The director of the division of homeland security shall serve as the chairman of  
19 the state emergency response commission. In the absence of the chairman, the  
20 designated vice chairman shall serve as chairman. The state emergency  
21 response commission by vote will select the vice chairman to fulfill a two-year  
22 term. The chairman shall recognize the assignment of representatives to the  
23 commission who are designated through a delegation of authority by a member.  
24 The chairman shall designate a commission secretary, solely for the purpose of

1            documenting and distributing clerical proceedings, from the staff of the division of  
2            homeland security.

3            d. For the purpose of complying with the reporting requirements set forth in  
4            sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001,  
5            et seq., also referred to as SARA title III, the owner and operator of any facility, as  
6            defined in SARA title III, shall submit those reports to the North Dakota division of  
7            homeland security as required by SARA title III, which shall establish and  
8            maintain the state repository for these reports.

9            e. For purposes of monitoring, determining if emergency response may be required,  
10           and notifying local officials, owners and operators or responsible parties shall  
11           report all spills or discharges to the appropriate state agency as required by law.  
12           The report must include the name of the reporting party, including phone number  
13           and address; date; time of release; location of release; containment status; name  
14           of the chemical, if waterways are involved; and immediate potential threat. If the  
15           release occurs or travels offsite from a facility, the owner and operator or  
16           responsible party shall notify the surface owner within a reasonable time. State  
17           agencies that receive direct reports of spills or discharges shall provide the report  
18           information to the division within a time that is consistent with potential level of  
19           response needed.

20           2. Establishment of funds.

21           a. There is created in the state treasury a nonlapsing restricted account to be  
22           known as a state hazardous chemicals preparedness and response fund. The  
23           fund consists of revenue collected from the state hazardous chemical fee system  
24           and funds appropriated by the legislative assembly. Moneys in the fund shall be  
25           appropriated biennially to the division of homeland security for carrying out the  
26           purposes, goals, and objectives of SARA title III, and the state hazardous  
27           chemicals preparedness and response program.

28           b. The county treasurer of each county shall establish a nonlapsing restricted  
29           account, to be known as the county hazardous chemicals preparedness and  
30           response account. The county hazardous chemicals preparedness and response  
31           account consists of revenue from the state hazardous chemicals fee system,

1 county, federal or state funds, grants, and any private donations provided to  
2 finance the county hazardous chemicals preparedness and response program.

- 3 c. Each owner and operator of a facility, as defined in SARA title III, shall pay an  
4 annual hazardous chemicals fee to the division of homeland security by March  
5 first of each year. The fee is twenty-five dollars for each chemical within the  
6 meaning of ~~40-CFR 355.20~~ title 40, Code of Federal Regulations, part 355.20, or  
7 its successor which is required under section 312 of SARA title III, to be listed on  
8 the hazardous chemical inventory form (tier II) which the owner or operator must  
9 submit to the division. The federal requirements must be used for completing the  
10 tier II form, including the threshold amounts, as outlined in ~~40-CFR 370.20~~ title 40,  
11 Code of Federal Regulations, part 20. The maximum fee for a facility under this  
12 section is four hundred seventy-five dollars. The director of the homeland security  
13 division may impose fees for both late filing of reports and late payment of fees.  
14 After six months the director shall process further violations under willful  
15 violations in subsection 4. The division of homeland security shall transfer to the  
16 county hazardous chemicals preparedness and response account one-half of the  
17 funds ~~regular fees~~ collected from the state's hazardous chemicals fee system.

- 18 d. ~~Owners or operators of facilities that maintain single storage tanks or a series of~~  
19 ~~connected tanks that have a shell capacity of five hundred thousand pounds~~  
20 ~~[226,796.2 kilograms] or more for each chemical within the meaning of title 40,~~  
21 ~~Code of Federal Regulations, part 355.20, under section 312 of SARA title III, are~~  
22 ~~subject to a surcharge of two hundred dollars per tank or for each series of~~  
23 ~~connected tanks. In addition, two hundred dollars per each range code above~~  
24 ~~one million pounds will be assessed. The maximum surcharge fee for any single~~  
25 ~~facility is two thousand dollars per year. Reporting of tanks requiring surcharges~~  
26 ~~is included in tier II reports and is due annually. The director of homeland security~~  
27 ~~division shall establish a grant program for emergency response departments~~  
28 ~~and disperse ninety five percent of the funds collected from surcharges annually.~~  
29 ~~The remaining five percent must be retained by the division for the administration~~  
30 ~~of the state's hazardous chemical preparedness and response program.~~

1 | ~~e.~~ The owners or operators of family farm enterprises that are not engaged in the  
2 | retail or wholesale of hazardous chemicals and facilities owned by the state or  
3 | local governments are exempt from the fee under subdivision c. For purposes of  
4 | this section, the terms "family farm" and "farmer" have the same meaning as set  
5 | forth in section 6-09.11-01.

6 | ~~e.f.~~ The state and county governments are authorized to accept and may deposit  
7 | grants, gifts, and federal funds into the hazardous chemicals preparedness and  
8 | response fund and accounts for the purpose of carrying out the hazardous  
9 | chemicals preparedness and response programs to include training, exercising,  
10 | equipment, response, and salaries, and local emergency planning committee  
11 | member stipends not to exceed thirty percent of state per diem per meeting  
12 | attended. In lieu of stipends the committee chair may provide a meal or  
13 | refreshments.

14 | ~~f.g.~~ "Hazardous chemical" means as defined in 40-CFR-355.20 title 40, Code of  
15 | Federal Regulations, part 355.20 and 29-CFR-1910.1200 title 29, Code of Federal  
16 | Regulations, part 1910.1200.

17 | ~~g.h.~~ The state hazardous chemicals fee system does not supersede a city fee system  
18 | for hazardous chemicals.

19 | 3. a. A person who causes a release, as defined in 40-CFR-355.20 title 40, Code of  
20 | Federal Regulations, part 355.20, of a hazardous chemical in excess of the  
21 | reportable quantity of that chemical, as defined in 40-CFR-355.20 title 40, Code of  
22 | Federal Regulations, part 355.20, is liable for the response costs incurred by  
23 | state or local hazardous chemical response personnel. The state agency, local  
24 | agency, volunteer organization, or hazardous chemical response personnel, as  
25 | identified in the state or local emergency operations plan, which undertakes a  
26 | response action may recover those response costs in an action brought before a  
27 | court of competent jurisdiction. If more than one jurisdiction, organization, or  
28 | agency incurs response costs for the same hazardous chemical release or  
29 | incident, those hazardous chemical response jurisdictions, agencies,  
30 | organizations, or personnel may file a joint action and may designate one entity  
31 | to represent the others in the action.

- 1           b. In the action to recover reasonable and necessary response costs, state  
2           agencies, local agencies, or volunteer organizations may include operational,  
3           administrative, personnel, and legal costs incurred from its initial response action  
4           up to the time that it recovers its cost. Reasonable and necessary costs are those  
5           additional costs incurred that are a result of the responsible party's failure or  
6           inability to implement or initiate the necessary actions to protect life, property, and  
7           the environment.
- 8           4.   a. A person who willfully violates any of the reporting, planning, or notification  
9           requirements outlined in the provisions of the Emergency Planning and  
10          Community Right-to-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C.  
11          11001 et seq.], ~~or fails to pay a state hazardous chemicals fee~~ is subject to a civil  
12          fine of not more than fifteen thousand dollars for each separate offense. For  
13          purposes of this subdivision, each day of continued violation constitutes a  
14          separate offense. All civil fines collected under this subdivision must be deposited  
15          in the state general fund. The state and its political subdivisions and employees  
16          of the state or a political subdivision acting within the scope of their employment  
17          are not subject to the civil fines established in this subdivision.
- 18          b. Any person who knowingly falsifies information or who intentionally obstructs or  
19          impairs, by force, violence, physical interference, or obstacle, a representative of  
20          state or local government or state or local hazardous chemicals response  
21          personnel attempting to perform duties and functions in state or local emergency  
22          operations plans or complying with Public Law 99-499, SARA title III, is guilty of a  
23          class B misdemeanor. The state and its political subdivisions and employees of  
24          the state or a political subdivision acting within the scope of their employment are  
25          not subject to the penalty established in this subdivision.
- 26          5. If the director of the division of homeland security determines that a violation of this  
27          chapter has occurred, the director shall make all evidence available to the attorney  
28          general for use in any remedial action the attorney general's office determines  
29          appropriate, including injunctive relief. Nothing in this section may be construed to  
30          deny use of the remedies authorized under chapter 32-40.