



Legislative Fiscal Bureau

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March 12, 2020

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Public Health Emergency and Funding Options to Address the COVID-19 Response

This memorandum discusses Executive Order #72, in which the Governor proclaimed that a public health emergency exists for the state. A copy of the Executive Order #72 is attached to this memorandum. In addition, the memorandum summarizes several options available to the state under current law that would potentially be available to provide additional resources to state and local agencies to respond to the outbreak of coronavirus 2019 (COVID-19), a communicable respiratory disease.

This memorandum was prepared in consultation with staff of the Legislative Council and Legislative Reference Bureau.

Public Health Emergency Declaration (Executive Order #72)

On March 12, 2020, the Governor issued Executive Order #72, which proclaimed that a public health emergency exists for the state, and designated the Department of Health Services (DHS) as the lead agency to respond to the public health emergency.

Under s. 323.10 of the statutes, the Governor may issue an executive order declaring a state of emergency related to public health (public health emergency) exists. A public health emergency is statutorily defined under s. 321.02(16) of the statutes as an occurrence or imminent threat of an illness or health condition that meets all of the following criteria: (a) is believed to be caused by bioterrorism or a novel or previously controlled or eradicated biological agent; and (b) poses a high probability of either a large number of deaths or serious or long-term disabilities among humans, or a high probability of widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people.

Under s. 323.12 of the statutes, the Governor has broad authority to issue such orders as he or she deems necessary for the security of persons and property. Further, the Governor must review

orders establishing or altering emergency management areas, review state emergency management plans and modifications to the plans, and determine responsibilities of state departments and agencies with respect to emergency management and by order direct those departments and agencies in utilizing personnel, facilities, supplies, and equipment. The Governor also has the authority to coordinate with other states under mutual aid agreements concerning emergency management.

If the Governor makes such a declaration, the Governor may designate DHS as the lead state agency to respond to that emergency. A state of emergency may not exceed 60 days, unless the state of emergency is extended by a joint resolution of the Legislature. The executive order may be revoked at the discretion of either the Governor by executive order or by the Legislature by joint resolution.

Section 250.042 of the statutes authorizes DHS to take certain actions during a public health emergency, including designating a local public health department as an agent of the Department, conferring the powers and duties of the public health authority. As the public health authority, DHS may: (a) purchase, store, or distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that DHS determines are advisable to control a public health emergency; (b) order any individual to receive a vaccination unless the vaccination is reasonably likely to lead to serious harm to the individual or unless the individual, for reasons of religion or conscience, refuses to obtain the vaccination; and (c) isolate or quarantine any individual who is unable or unwilling to require vaccinations.

Section 252.06 of the statutes authorizes DHS and local public health officers, acting on behalf of DHS, to require isolation of an individual, quarantine of contacts, concurrent and terminal disinfection, or modified forms of these procedures, as may be necessary, under specified conditions, including during a public health emergency. The statute specifies the cost responsibilities that generally apply as they relate to individuals subject to mandatory isolation and quarantines, as follows.

- Expenses for necessary medical care, food and other articles needed for the care of the infected person is charged against the person or whoever is liable for the person's support.
- The county or municipality in which a person with a communicable disease resides is liable for the following costs, unless the costs are payable through third-party liability or through any benefit system: (a) the expenses of employing guards; (b) the expense of maintaining and enforcing isolation of the quarantined area; (c) the expenses of conducting examinations and tests for disease carriers made under the direction of the local health officer; and (d) the expense of care provided to certain dependents.

However, during a public health emergency where DHS is designated as the lead state agency, all expenses incurred by a local health department, or by an entity designated as a local health department by a federally recognized American Indian tribe or band, in quarantining a person outside his or her home during a public health emergency and not reimbursed from federal funds are reimbursed from a GPR-funded sum-sufficient appropriation budgeted in the DHS Division of Public Health for this purpose [s. 20.435(1)(c)].

If the Governor declares a state of emergency relating to public health, the Governor may also order into state active duty members of the Wisconsin National Guard under s. 321.39 of the statutes. Any commissioned officer or enlisted member of the National Guard who fails to carry out orders, or fails to appear at the time or place ordered, will be punished under the Wisconsin Code of Military Justice. In addition, any person who assists an officer or member of the National Guard in violating such orders will be subject to a forfeiture of not less than \$200 nor more than \$1,000.

Under s. 323.13 of the statutes, the Adjutant General must develop and adopt a state plan of emergency management for the security of persons and property, and to coordinate emergency management programs. The Adjutant General also must furnish guidance and establish standards for emergency management programs for local units of government, and to refuse to approve grants of certain funds or items of equipment awarded to the local unit of government until it has implemented an emergency management plan.

The Wisconsin Department of Military Affairs indicates that it has submitted to the Governor's Office mission ready packages that include plans for decontamination, security, prison guard backfill, engineering support for Department of Transportation, medical assistance to DHS for advisory purposes, medical assistance for Department of Corrections prisons, and transportation. The Department indicates such activities would be funded under its appropriation for public emergencies, which is a sum sufficient GPR appropriation [s. 20.465(1)(c)].

As part of Executive Order #72, the Governor has declared that a period of abnormal economic disruption is occurring in Wisconsin. Under section 100.305 of the statutes, if the Governor declares Wisconsin is undergoing a period of abnormal economic disruption, consumer goods or services (defined as those used primarily for personal, family, or household purposes) may not be sold at unreasonably excessive prices. Any seller who violates s. 100.305 may be subject to regulatory action by the Department of Agriculture, Trade and Consumer Protection (DATCP), including referral to the Department of Justice for legal action with penalties of up to \$10,000.

Administrative rule ATCP 106 outlines procedures for DATCP to determine if a consumer good or service has been excessively priced. ATCP 106.02 limits markups during a period of abnormal economic disruption to no more than 15% above than the highest price in the 60 days preceding the Governor's declaration. This maximum allowable markup does not apply if: (a) the sale price does not exceed the seller's cost plus a normal markup; (b) the price is required by law; or (c) the declaration exempts the sale of that product. For the purposes of enforcing ATCP 106, DATCP may require a seller to provide information regarding the product's price, sale location, and specifications, and any other relevant information as determined by the Department.

Current State Funding Budgeted for Public Health Communicable Disease Control and Prevention

2017 Wisconsin Act 59 (the 2017-19 biennial budget act) provided \$500,000 GPR annually, beginning in 2017-18, for DHS to distribute as grants to control and prevent communicable diseases. Local health departments may use the grant funds to support disease surveillance, contact tracing, staff development and training, improving communication among healthcare professionals, public

education and outreach, and other infection control activities that local health departments are required to undertake in accordance with Chapter 252 of the statutes. The act specified criteria DHS must consider in determining the amount of grant funding to distribute to each local health departments, including: (a) a base funding amount, with each local health department guaranteed at least some level of base funding; (b) general population; (c) target populations; (d) risk factors; and (e) geographic area, including consideration of the size of the geographic area served by the local health department or the density of the population.

2019 Wisconsin Act 9 (the 2019-21 biennial budget act) maintains base funding for this grant program (\$500,000 GPR annually).

Joint Committee on Finance Authority to Transfer Funding

Section 13.101 of the statutes authorizes the Joint Committee on Finance to take several actions to supplement appropriations under specified circumstances. The Committee could authorize a one-time funding increase to the communicable disease control and prevention grant program as a means of assisting local public health agencies in controlling the COVID-19 outbreak.

First, under s. 13.101(3) of the statutes, the Committee may supplement, from its GPR-supported program supplements appropriation, the appropriation of any state department, board, commission or agency, which is insufficient because of unforeseen emergencies or insufficient to accomplish the purpose for which it is made, if the Committee finds that: (a) an emergency exists; (b) no funds are available for such purposes; and (c) the purposes for which a supplemental appropriation is requested have been authorized or directed by the Legislature. Currently, the total funding available in the Committee's program supplements appropriation for the 2019-21 biennium is \$14,343,700 GPR. However, of this amount, \$14,118,000 GPR is reserved to fund initiatives approved as part of 2019 Act 9 (the 2019-21 biennial budget act). Consequently, the unreserved amount available in this appropriation is \$225,700 GPR.

Second, under s. 13.101(4) of the statutes, the Committee may transfer funding between appropriations and programs if the Committee finds that unnecessary duplication of functions can be eliminated, more efficient and effective methods for performing programs will result, legislative intent will be more effectively carried out because of the transfer, if legislative intent will not be changed as the result of such transfer, and the purposes for which the transfer is requested have been authorized or directed by the Legislature. Unlike the provision under s. 13.101(3), which prevents the Committee from transferring more than the amount available from the Committee's program supplements appropriation, the provision under s. 13.101(4) could be used by the Committee to reallocate funding of any amounts from one or more appropriations, as long as the Committee determines that the transfer meets the statutory conditions.

Federal Legislation

On March 6, 2020, President Trump signed P.L. 116-123, the Coronavirus Preparedness and Response Supplemental Appropriations Act, which provided \$8.3 billion to fund federal and state actions to address the COVID-19 outbreak.

Of the total, \$2.2 billion is budgeted for the U.S. Centers for Disease Control and Prevention (CDC), with the requirement that CDC provide at least \$950 million to fund grants to, or cooperative agreements with, states, localities, territories, and tribes to carry out surveillance, epidemiology, expanding laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities. CDC may use this funding to support eligible state expenses incurred beginning in January, 2020. The federal act requires that half of the funding allocated for local activities (\$475 million) be allocated within 30 days of the enactment of the bill.

Further, the act specifies that every grantee that received a public health emergency preparedness grant for federal fiscal year (FFY) 2018-19 will receive at least 90 percent of that grant level from funding authorized in P.L. 116-123. As Wisconsin's FFY 2018-19 public health emergency preparedness grant award was approximately \$11.3 million Wisconsin will receive at least \$10.2 million due this provision. Grantees are required to submit a spending plan for this allocation no later than 45 days after the enactment of the act. In addition, Wisconsin will receive \$0.5 million as part of funding targeted to jurisdictions with the largest burden of response and preparedness to date and \$0.5 million to begin surveillance.

DHS does not require additional authority from the Legislature, either through enactment of legislation or approval by the Joint Committee on Finance, in order to administer the funding the state receives under the federal legislation.

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Attachment

ATTACHMENT



EXECUTIVE ORDER #72

Relating to a Proclamation Declaring a Health Emergency in Response to the COVID-19 Coronavirus

WHEREAS, in December, 2019, a novel strain of the coronavirus was detected, now named COVID-19, and it has spread throughout numerous countries including the United States;

WHEREAS, international organizations, the federal government, state government, and local governments are all working together to contain the further spread of the disease and treat existing cases;

WHEREAS, the World Health Organization has declared a Public Health Emergency of International Concern, and the United States Department of Health and Human Services has declared a Public Health Emergency;

WHEREAS, the State of Wisconsin has been working to protect all Wisconsinites from the spread of this disease, and to prepare for the impacts it may have on the state; and

WHEREAS, in order to protect the health and well-being of its residents, the State of Wisconsin must avail itself of all resources needed to respond to and contain the presence of COVID-19 in the State.

NOW, THEREFORE, I, TONY EVERS, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and laws of this state, and specifically by Sections 100.305, 321.39, 323.10, 323.12, and 323.13 of the Wisconsin Statutes, hereby:

1. Proclaim that a public health emergency, as defined in Section 323.02(16) of the Wisconsin Statutes, exists for the State of Wisconsin.
2. Designate the Department of Health Services as the lead agency to respond to the public health emergency.
3. Direct the Department of Health Services to take all necessary and appropriate measures to prevent and respond to incidents of COVID-19 in the State.
4. Suspend the provisions of any administrative rule, if the Secretary of the Department of Health Services determines that compliance with that rule would prevent, hinder, or delay necessary actions to respond to the emergency and increase the health threat.
5. Authorize the Adjutant General to activate the Wisconsin National Guard as necessary and appropriate to assist in the State's response to the public health emergency.
6. Direct all state agencies to assist as appropriate in the State's ongoing response to the public health emergency.

7. Proclaim that a period of abnormal economic disruption, as defined in Section 100.305 of the Wisconsin Statutes, exists in the State of Wisconsin.
8. Direct the Department of Agriculture, Trade, and Consumer Protection to enforce prohibitions against price gauging during an emergency, as authorized under Section 100.305 of the Wisconsin Statutes and Chapter ATCP 106 of the Wisconsin Administrative Code.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this twelfth day of March in the year of two thousand twenty.



TONY EVERS
Governor

By the Governor:



DOUGLAS LA FOLLETTE
Secretary of State