

2003 SENATE BILL 120

April 16, 2003 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Homeland Security, Veterans and Military Affairs and Government Reform.

1 **AN ACT to renumber** 250.07; **to amend** 20.465 (3) (e), 166.03 (2) (a) 1., 2. and
2 3., 166.03 (5) (a), 166.03 (10) and 250.042 (1); and **to create** 15.197 (13), 20.435
3 (1) (c), 66.0314, 166.02 (6m) and (6r), 250.07 (1m), 252.06 (10) (c), 947.017 and
4 973.06 (1) (ar) of the statutes; **relating to:** creating a public health council,
5 reimbursement for quarantine costs, intrastate mutual aid, requiring use of the
6 incident command system in an emergency, exemption from liability during a
7 state of emergency, threats to release or disseminate harmful chemical,
8 biological, or radioactive substances, making appropriations, and providing a
9 penalty.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on the Public Health System's Response to Terrorism and Public Health Emergencies.

Public Health Council

The bill creates a 17-member Public Health Council in the Department of Health and Family Services (DHFS). The council must include representatives of health care consumers, health care providers, health professions educators, local health departments and boards, public safety agencies, and the Public Health Advisory Committee established by the Secretary of DHFS.

The council is required to advise DHFS, the governor, the legislature, and the public on progress in implementing DHFS's 10-year public health plan and coordination of responses to public health emergencies.

Reimbursement for Quarantine Costs

The bill requires the state to reimburse local health departments for all of their expenses incurred in quarantining a person outside his or her home during a declared state of emergency related to public health and not reimbursed from federal funds.

Reimbursement would be made from one of 2 state sum sufficient appropriations: (1) a DHFS appropriation created in this bill, if the governor has called a state of emergency related to public health under s. 166.03 (1) (b) 1. and has designated DHFS as the lead state agency; or (2) an existing Department of Military Affairs (DMA) appropriation, if the governor has called a state of emergency related to public health under s. 166.03 (1) (b) 1. but has not designated DHFS as the lead state agency.

Intrastate Mutual Aid

The bill establishes a statewide system of mutual aid for emergency management programs, emergency medical services (EMS) programs, fire departments, and local health departments.

Currently, law enforcement agencies are authorized to enter into mutual aid agreements with other law enforcement agencies in the state, under s. 66.0313 (2), stats. The personnel of the agency furnishing assistance are considered employees of the requesting agency while providing assistance. Law enforcement agencies may also enter into mutual aid agreements with law enforcement agencies in adjacent states.

The state is party to a compact for interstate emergency management mutual aid, but there is no specific statutory provision for intrastate emergency management mutual aid. The statutes provide that counties, towns, and municipalities may cooperate through an intergovernmental contract to provide and finance emergency management services and combine offices. Generally, this contracting has been between adjacent counties.

Fire departments throughout the state operate under mutual aid agreements with other in-state fire departments that are not specifically provided for in statutes. These mutual aid agreements appear to fall under the general language of s. 66.0301, stats., which permits municipalities to enter into intergovernmental cooperation agreements. A provision of the Wisconsin administrative code relating to fire department dues provides that a fire department may use mutual aid agreements as a means of providing fire protection services. [s. Comm. 14.48 (1) (b) 1., Wis. Adm. Code.]

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Some local fire departments are also parties to interstate fire mutual aid agreements under the general statutory provision authorizing municipal interstate cooperation agreements. [s. 66.0303, stats.]

Under the bill, upon the request of a county, city, village, or town, or a person acting under an incident command system (ICS), the personnel of any emergency management program, EMS program, fire department, or local health department may assist the requester within the requester's jurisdiction, without regard to any other jurisdictional provision. The entity employing the personnel acting in response to a request for assistance is responsible for the personnel-related costs incurred in providing the assistance. The bill defines "incident command system" using language from the definition in s. Comm. 30.01 (16), Wis. Adm. Code, and from the state of Washington's ICS statutes.

Incident Command System

The bill requires utilization of the ICS in managing emergencies and training of specified personnel in the use of the ICS.

Under current law:

1. Department of Commerce administrative rules governing fire department incident management require that every public sector fire department establish an ICS which has written guidelines applying to all fire fighters involved in emergency operations and which identifies fire fighter roles and responsibilities relating to the safety of operations. These rules define "incident command system" as an organized system of roles, responsibilities, and suggested operating guidelines used to manage and direct emergency operations. Under these rules, fire departments are required to train all fire fighters involved in emergency operations in the ICS and assign safety responsibilities to supervisory personnel at each level of operations. [ss. Comm. 30.14 (1) (a) to (c) and 30.01 (16), Wis. Adm. Code.] A footnote to the incident command rule provision indicates that suggested operating guidelines have been developed and published by the Wisconsin Technical Colleges System Board.

2. Department of Natural Resources administrative rules relating to hazardous substance discharge response provide that when deemed appropriate to effectively coordinate all actions at the scene of a hazardous substance discharge, an ICS shall be implemented. In these rules, "incident command system" is defined as an organized approach used to effectively control and manage operations at the scene of a hazardous substance discharge. [ss. NR 702.09 (2) and 702.03, Wis. Adm. Code].

3. The state Emergency Operations Plan (EOP) developed by the Division of Emergency Management (known as "Wisconsin Emergency Management" or "WEM") provides that an ICS "will be used in disaster response". However, the EOP does not indicate specifically what the ICS system entails or who must use it. The EOP further states that unified command is to be used in situations which affect multiple jurisdictions or multiple agencies within a jurisdiction or which require response by multiple levels of government. The EOP notes that these command and control systems require the participation of the chief elected officials. The EOP also provides that as the lead state agency for direction and control, WEM is to direct and coordinate emergency operations to support incident command at the local level.

At present, there are no statutory provisions pertaining to incident command.

This bill does the following:

1. Defines the term "incident command system", using language from the definition in s. Comm. 30.01 (16), Wis. Adm. Code, and from the State of Washington's incident command statutes.

2. Requires that an incident command system be used by all emergency response agencies, including local health departments, in responding to, managing, and coordinating multi-agency or multi-jurisdiction incidents, when a state or local emergency declaration has been made or in any other emergency situation.

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3. Requires the Adjutant General, in developing statewide emergency training and exercise programs, to provide training to officers and employees of local health departments and to elected and appointed local government officials in use of the ICS in managing emergencies. The Adjutant General must consult with DHFS regarding the ICS training for local health department personnel. The bill requires the Adjutant General to utilize federal funding to provide this training, to the extent possible.

Exemption From Liability

Current law provides an exemption from liability for a person who provides equipment or services during a state of emergency declared by the governor for the death of or injury to any person or damage to any property caused by his or her actions. The immunity does not apply if the person acted intentionally or with gross negligence. Under current law, the exemption from liability applies if the person provides the equipment or services under the direction of the governor, the adjutant general, or the head of emergency management services in any county, town, or municipality.

The bill amends the law so that the exemption from liability also applies if the person provides the equipment or services under the direction of DHFS, if that department is designated by the governor as the lead state agency to address a public health emergency, or at the direction of a local health department that is acting as the agent of DHFS.

Chemical, Biological, or Radioactive Substance Threats

The bill prohibits a person from intentionally making a threat to release or disseminate a harmful substance, knowing that the threat is false, if the threat induces a reasonable expectation or fear that the person will release or disseminate a harmful substance. The term "harmful substance" is defined as radioactive material that is harmful to human life, a toxic chemical or its precursor, or a biological agent. A person who violates this prohibition is guilty of a Class I felony, which is punishable by a fine of not more than \$10,000, imprisonment for not more than 3-1/2 years, or both.

The bill further requires that persons who violate this prohibition are to be assessed by the court for moneys expended by a state or local government agency for activities in connection with the threat, including: (1) the response to the threat by emergency medical personnel; (2) the analysis of any substance alleged to be a harmful substance; and (3) the treatment of persons who are alleged to have been exposed to an alleged harmful substance. The moneys assessed are to be reimbursed to the state or local agency that incurred the expense.

- 1 **SECTION 1.** 15.197 (13) of the statutes is created to read:
- 2 15.197 **(13)** PUBLIC HEALTH COUNCIL. There is created in the department of
- 3 health and family services a public health council consisting of 17 members,
- 4 nominated by the secretary of health and family services, and appointed for 3-year
- 5 terms. The council shall include representatives of health care consumers, health
- 6 care providers, health professions educators, local health departments and boards,
- 7 public safety agencies, and, if created by the secretary of health and family services
- 8 under s. 15.04 (1) (c), the public health advisory committee.
- 9 **SECTION 2.** 20.435 (1) (c) of the statutes is created to read:

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1 20.435 **(1)** (c) *Public health emergency quarantine costs.* A sum sufficient to
2 reimburse local health departments under s. 252.06 (10) (c) 1.

3 **SECTION 3.** 20.465 (3) (e) of the statutes is amended to read:

4 20.465 **(3)** (e) *Disaster recovery aid; public health emergency quarantine costs.*
5 A sum sufficient to pay the state share of grants to individuals ~~and~~ to make
6 payments to local governments as defined in 42 USC 5122 (6) under federal disaster
7 recovery programs as authorized in s. 166.03 (2) (b) 8., and to reimburse local health
8 departments under s. 252.06 (10) (c) 2.

9 **SECTION 4.** 66.0314 of the statutes is created to read:

10 **66.0314 Emergency management, emergency medical services, fire,**
11 **and local health departments; mutual assistance. (1)** In this section:

12 (a) “Emergency management program” means the emergency management
13 program of a city, village, town, or county, under s. 166.03 (4) (a).

14 (b) “Emergency medical services program” means a program established under
15 s. 146.55.

16 (c) “Fire department” means any public organization engaged in fire fighting
17 or a private sector employer fire company or fire department organized as a nonstock,
18 nonprofit corporation under ch. 181 or ch. 213 without the input of a municipality.

19 (d) “Incident command system” means a functional management system
20 established to control, direct, and manage the roles, responsibilities, and operations
21 of all of the agencies involved in a multi-jurisdictional or multi-agency emergency
22 response.

23 (e) “Local health department” has the meaning given in s. 250.01 (4).

24 **(2)** Upon the request of a city, village, town, or county, or a person acting under
25 an incident command system, the personnel of any emergency management

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1 program, emergency medical services program, fire department, or local health
2 department may assist the requester within the requester's jurisdiction,
3 notwithstanding any other jurisdictional provision. The program or department
4 employing the personnel acting in response to a request for assistance shall be
5 responsible for any personnel-related costs.

6 **SECTION 5.** 166.02 (6m) and (6r) of the statutes are created to read:

7 166.02 **(6m)** "Incident command system" means a functional management
8 system established to control, direct, and manage the roles, responsibilities, and
9 operations of all of the agencies involved in a multi-jurisdictional or multi-agency
10 emergency response.

11 **(6r)** "Local health department" has the meaning given in s. 250.01 (4).

12 **SECTION 6.** 166.03 (2) (a) 1., 2. and 3. of the statutes are amended to read:

13 166.03 **(2)** (a) 1. Subject to approval by the governor, develop and promulgate
14 a state plan of emergency management for the security of persons and property
15 which shall be mandatory during a state of emergency. In developing the plan, the
16 adjutant general shall seek the advice of the department of health and family
17 services with respect to the emergency medical aspects of the plan. The plan shall
18 require the use of the incident command system by all emergency response agencies,
19 including local health departments, during a state of emergency declared under sub.
20 (1) (b) 1. or s. 166.23 (1) or in any other multi-jurisdictional or multi-agency
21 emergency response.

22 2. Prescribe and carry out statewide training programs and exercises to
23 develop emergency management proficiency, disseminate information including
24 warnings of enemy action, serve as the principal assistant to the governor in the
25 direction of emergency management activities and coordinate emergency

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1 management programs between counties. The training programs shall include
2 training in managing emergency operations utilizing the incident command system
3 for local government officials, officers, and employees whose duties include
4 responding to emergencies, including officers and employees of local health
5 departments. The adjutant general shall consult with the department of health and
6 family services regarding the provision of incident command system training to local
7 health department personnel. To the extent possible, the adjutant general shall
8 utilize federal funding to provide incident command system training.

9 3. Furnish guidance and develop and promulgate standards for emergency
10 management programs for counties, towns and municipalities, and prescribe
11 nomenclature for all levels of emergency management. The standards shall include
12 a requirement that county, town, and municipal emergency management programs
13 under sub. (4) (a) utilize the incident command system during a state of emergency
14 declared under sub. (1) (b) 1. or s. 166.23 (1) or in any other multi-jurisdictional or
15 multi-agency emergency response.

16 **SECTION 7.** 166.03 (5) (a) of the statutes is amended to read:

17 166.03 (5) (a) The head of emergency management services in each county,
18 town and municipality shall for his or her respective county, town or municipality,
19 develop and promulgate emergency management plans consistent with state plans,
20 direct the emergency management program and perform such other duties related
21 to emergency management as are required by the governing body and the emergency
22 management committee of the governing body when applicable. The emergency
23 management plans shall require the use of the incident command system by all
24 emergency response agencies, including local health departments, during a state of

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1 emergency declared under sub. (1) (b) 1. or s. 166.23 (1) or in any other
2 multi-jurisdictional or multi-agency emergency response.

3 **SECTION 8.** 166.03 (10) of the statutes is amended to read:

4 166.03 (10) EXEMPTION FROM LIABILITY. No person who provides equipment or
5 services under the direction of the governor, the adjutant general or the head of
6 emergency management services in any county, town or municipality, the
7 department of health and family services if that department is designated by the
8 governor under s. 166.03 (1) (b) 1., or a local health department acting under s. 251.05
9 (3) (e) during a state of emergency declared by the governor is liable for the death of
10 or injury to any person or damage to any property caused by his or her actions, except
11 where the trier of fact finds that the person acted intentionally or with gross
12 negligence. This subsection does not affect the right of any person to receive benefits
13 to which he or she would otherwise be entitled under the worker's compensation law
14 or under any pension law, nor does it affect entitlement to any other benefits or
15 compensation authorized by state or federal law.

16 **SECTION 9.** 250.042 (1) of the statutes is amended to read:

17 250.042 (1) If the governor declares a state of emergency related to public
18 health under s. 166.03 (1) (b) 1. and designates the department as the lead state
19 agency to respond to that emergency, the department shall act as the public health
20 authority during the period of the state of emergency. The department shall ensure
21 that the emergency operations during the state of emergency are conducted using the
22 incident command system required under s. 166.03 (2) (a) 1. During the period of the
23 state of emergency, the secretary may designate a local health department as an
24 agent of the department and confer upon the local health department, acting under
25 that agency, the powers and duties of the public health authority.

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1 **SECTION 10.** 250.07 of the statutes is renumbered 250.07 (1).

2 **SECTION 11.** 250.07 (1m) of the statutes is created to read:

3 250.07 **(1m)** The public health council shall monitor implementation of any
4 document developed by the department under sub. (1) (a) and shall advise the
5 governor, the legislature, the department, and the public on progress in
6 implementing the document and coordination of responses to public health
7 emergencies.

8 **SECTION 12.** 252.06 (10) (c) of the statutes is created to read:

9 252.06 **(10)** (c) All expenses incurred by a local health department in
10 quarantining a person outside his or her home during a state of emergency related
11 to public health declared by the governor under s. 166.03 (1) (b) 1. and not reimbursed
12 from federal funds shall be paid for under either of the following, as appropriate:

13 1. If the governor designates the department as the lead state agency under s.
14 166.03 (1) (b) 1., from the appropriation under s. 20.435 (1) (c).

15 2. If the governor does not designate the department as the lead state agency
16 under s. 166.03 (1) (b) 1., from the appropriation under s. 20.465 (3) (e).

17 **SECTION 13.** 947.017 of the statutes is created to read:

18 **947.017 Threats to release chemical, biological, or radioactive**
19 **substances. (1)** In this section:

20 (a) “Biological agent” means a microorganism or an infectious substance, or any
21 naturally occurring, bioengineered, or synthesized toxin or component of a
22 microorganism or an infectious substance that is capable of causing death, disease,
23 or other biological malfunction in humans.

24 (b) “Harmful substance” means radioactive material that is harmful to human
25 life, a toxic chemical or its precursor, or a biological agent.

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1 (c) “Microorganism” includes a bacterium, virus, fungus, rickettsia, or
2 protozoan.

3 (d) “Precursor” means any chemical reactant that takes part at any stage in the
4 production by whatever method of a toxic chemical.

5 (e) “Toxic chemical” means any chemical that through its chemical action on life
6 processes can cause death, temporary incapacitation, or permanent harm to
7 humans.

8 (2) Whoever, knowing the threat to be false, intentionally threatens to release
9 or disseminate a harmful substance, if the threat induces a reasonable expectation
10 or fear that the person will release or disseminate a harmful substance, is guilty of
11 a Class I felony.

12 **SECTION 14.** 973.06 (1) (ar) of the statutes is created to read:

13 973.06 (1) (ar) If the defendant violated s. 947.017, moneys expended by a state
14 or local government agency in connection with the threat under s. 947.017 (2), to be
15 reimbursed to that agency, including moneys expended for the following activities:

16 1. The response to the threat by emergency medical personnel, as defined in
17 s. 941.37 (1) (c).

18 2. The analysis of any substance alleged to be a harmful substance, as defined
19 in s. 947.017 (1).

20 3. The medical treatment of persons who are alleged to have been exposed to
21 an alleged harmful substance, as defined under s. 947.017 (1).

22 **SECTION 15. Nonstatutory provisions.**

23 (1) PUBLIC HEALTH COUNCIL. Notwithstanding the length of terms specified for
24 the members of the public health council under section 15.197 (13) of the statutes,
25 as created by this act, the initial members of the public health council shall be

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1 appointed by the first day of the 4th month beginning after the effective date of this
2 subsection for the following terms:

- 3 (a) Six members for terms expiring on July 1, 2005.
4 (b) Six members for terms expiring on July 1, 2006.
5 (c) Five members for terms expiring on July 1, 2007.

6 (END)