

2003 DRAFTING REQUEST

Senate Amendment (SA-SA1-SB120)

Received: 01/30/2004

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Ronald Brown (608) 266-8546

By/Representing: Missy, Dick Sweet

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: **Munis - miscellaneous
Counties - miscellaneous
Health - emergency med services**

Extra Copies:

Submit via email: YES

Requester's email: **Sen.Brown@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Intrastate mutual aid agreements

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	mshovers 01/30/2004	kfollett 01/30/2004	pgreensl 01/30/2004	_____	sbasford 01/30/2004	sbasford 01/30/2004	

FE Sent For:

<END>

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/1	mshovers	11/1/04	1/30/04	1/30/04			
11MES	1/30/04	30	18	self			

FE Sent For:

<END>

Shovers, Marc

From: Sweet, Richard
Sent: Tuesday, January 20, 2004 10:58 AM
To: Shovers, Marc
Cc: Gilbert, Melissa; Shannon, Pam; Offerdahl, Mary
Subject: RE: FW: LRB 03a1870 Topic: Creation of public health council, emergency mutual aid

Marc,

Melissa Gilbert from Sen. Brown's office would like to request a Senate amendment to Sen. Am. 1 to SB 120, along the lines of what I suggested below to address the first point raised by the Wisconsin Association of Local Health Departments and Boards. (They are going to hold off on the second point for the time being.)

Let me know if you have any questions. Thanks for your help.

Dick

-----Original Message-----

From: Sweet, Richard
Sent: Tuesday, January 06, 2004 5:21 PM
To: 'Theresa M. Hottenroth'
Cc: Gilbert, Melissa; Shannon, Pam; Offerdahl, Mary
Subject: RE: FW: LRB 03a1870 Topic: Creation of public health council, emergency mutual aid

Terry,

I wonder if your first concern could be addressed by adding "or other agreement" on page 2, line 6, of the amendment after "66.0301". Also, on line 15, "under 66.0301" could be changed to "described under subd. 1."

Your second point probably warrants some further discussion by the various parties as to what is intended.

Dick

-----Original Message-----

From: Theresa M. Hottenroth [mailto:THottenroth@boardmanlawfirm.com]
Sent: Sunday, December 21, 2003 4:13 PM
To: Mary.Offerdahl@legis.state.wi.us; Melissa.Gilbert@legis.state.wi.us;
Pam.Shannon@legis.state.wi.us; Richard.Sweet@legis.state.wi.us;
bloomd@town.madison.wi.us
Cc: WEIDMANNJO@aol.com; Amy S. Dixon; superrn_2@charter.net;
mormann.doug@co.la-crosse.wi.us; LCPH@JUNO.com;
jawvd@mail.co.marathon.wi.us
Subject: Re: FW: LRB 03a1870 Topic: Creation of public health council, emergency mutual aid
Importance: High

** High Priority **

Dear Melissa,

Thanks much for forwarding a copy of the draft amendment to SB 120. I have looked it over on behalf of the WI Assn of Local Health Departments and Boards, and have just two questions/concerns, both dealing with the drafting of the mutual aid provisions:

1. A technical but potentially important issue - section 9 of the amendment relies on intergovernmental cooperation agreements as

authorized under sec. 66.0301, Stats., as the cornerstone for the mutual aid pacts that would generally serve as the basis for determining which agency (requesting or responding) is responsible for costs, to what degree, in what circumstances, etc. I think we are all in agreement with the concept of the amendment, which is that in general, where such an agreement exists, the agreement controls. If no agreement exists, then the receiving agency is responsible for the costs incurred by the responding agency. So far, so good.

However, the amendment specifically requires that the agreement be one under s. 66.0301. Sec. 66.0301(1)(a) lists the types of municipalities and municipal agencies that may enter into agreements governed by that section. It lists a city-county health department but it does not include other local health departments/boards authorized by statute that involve more than one city, village, town, or county. However, sec. 250.01 recognizes as permissible local health department structures not just a city-county health department, but also, e.g., a multiple municipal health department established under s. 251.02(3r) and a multiple county health department established under s. 251.02(3).

As I read the current statutes and the amendment, it seems to me that a multiple municipal health department and its governing board, and a multiple county health department and its governing board, are not covered by s. 66.0301, and therefore any mutual aid agreements such agencies entered into with others would not control any cost allocation between the agencies. Instead, per Section 9's new (b)3., "If no agreement under s. 66.0301 for the payment of such services exists, the governmental unit that receives the assistance is responsible..." (emphasis added). In effect, this new language would actually force a mutual aid agreement to be overridden, and the receiving agency to always pay the costs, where one of the agencies entering into the agreement is a "hybrid" such as a multiple municipal health department. (Except for city-county health departments, because they're already specifically referenced in 66.0301.) I think we want to include these other "hybrids" as well as city-county health departments. I suggest that the easiest way to do this is to add an amendment to s. 66.0301 which either adds the names of these hybrids to s. 66.0301(1)(a) after "city-county health department," or cross-references s. 250.01(4) in lieu of stating "city-county health department."

Examples:

Option 1. Amend s. 66.0301(1)(a) by deleting "or" in the very last line ("or city-county health department") and adding the following at the very end of the subsection (1)(a): "city-county health department, multiple municipal local health department, or multiple county health department".

Option 2: Amend s. 66.0301(1)(a) by deleting "city-county health department" at the very end, and adding something akin to this at the very end of the subsection (1)(a): "or local health department, as defined by s. 250.01(4), which is jointly established by any two or more counties, cities, villages, or towns".

Neither of these affects the ability/inability of a local health department and board established by a single municipality (e.g., Marathon County Health Department/Board) to enter into agreements itself (via the governing health board) under s. 66.0301, versus having those agreements entered into by the municipality (the city, county, etc. rather than the city or county board of health). Sec. 251.09 specifically provides that "[l]ocal health departments jointly may provide health services as agreed upon under s. 66.0301,..." but neither section addresses who may enter into a 66.0301 agreement. Currently, does the parent municipality enter into a mutual aid agreement for local health department services, or does the local board of health have the power to enter into such agreements? Does it vary depending on the grant of authority from the parent municipality? I don't know the answer to this, and I pose the question to those

receiving this e-mail, including the WALHDAB leadership whom I have cc'd on this missive. IF in some cases local boards of health have the authority to enter into mutual aid agreements on their own, without going back to, e.g., the county board for signoff, then the language of the proposed amendment would also override those agreements.

Option 3 fixes this (if it's a problem) and the problem of the hybrid, multiple-municipality health departments, as follows: at the very end of s. 66.0301(1)(a), at the phrase which now reads "or city-county health department," delete "city-county" and add "local"; after "department," add "as defined in s. 250.01(4)". Under this option, any health department (via its governing board) could enter into qualifying s. 66.0301 agreements depending on the powers granted to the local board of health by the municipality or municipalities creating the health department and board and depending on the limits of authority granted to the local health board by the creating municipality(ies). Note that the bill elsewhere uses s. 250.01(4) to define "local health department", e.g., Section 5 of the bill defining "local health department" for purposes of ch. 166 - emergency management, the incident command system, etc.

2. That was the technical issue. Now my substantive question: sub. 2 of Section 9 of the amendment provides that if a request for assistance pursuant to a mutual aid agreement is made under the state plan of emergency management (s. 166.03(2)(a)1.), and that plan is in effect/has been activated or invoked by a declaration of a state of emergency, then the mutual aid pact is overridden to the extent that the mutual aid agreement provides that the responding agency is responsible for any personnel or equipment costs, and requires that the receiving agency pay all costs.

My notes from our meeting discussing this issue indicate that we agreed that the mutual aid agreements should generally control the issue of cost recovery, and that in addition, as part of the emergency management plan or related administrative rules, the Dept of Emergency Government would specify when and how the responding agency can seek cost recovery from the receiving agency. We talked about the Illinois model in particular, and used as examples the ability for the responding agency to seek cost recovery from the receiving agency when there is a declared statewide public health emergency, or when there is a regional or local emergency where the responding agency exceeds some level of resource expenditure. My notes are unclear on whether we intended that to override a mutual aid agreement, or whether these would be the fallback or "default" rules where there is no mutual aid agreement applicable. I'm a little concerned that the draft amendment simply overrides a mutual aid agreement, if the agreement provides that the responding agency is responsible for any personnel or equipment costs, and instead requires that the receiving agency bear all costs, if the emergency management plan is in effect and aid is requested under the plan. As a result, for example, if a mutual aid agreement provided that the responding agency would provide certain services free, or a certain level or amount of services free, and would charge the receiving agency for services beyond those described, the amendment would override the agreement and the receiving agency would have to be charged for all costs. I'm not sure this is what we intended.

One alternative would be to defer the specifics on this to the Dept of Emergency Government and require that the state plan of emergency management, as described in s. 166.03(2)(a)1., specify when and to what extent the mutual aid agreements (the 66.0301 agreements) are overridden and the receiving agency becomes responsible for all or part of the costs notwithstanding other provisions of the 66.0301 agreement. This would require altering Section 9 of the amendment along the following lines:

- Keep the amendment language "as is" with respect to the proposed new language for (b)1. and (b)3. These provide that, per new (b)1., if a

66.0301 mutual aid agreement exists, the terms of that agreement for payment of services will be followed subject to new (b)2.; per new (b)3., if there is no 66.0301 agreement for payment of services, the receiving agency is responsible for the costs incurred by the responding agency.

- Rewrite Section 9's new (b)2., which specifies when and how 66.0301 agreements are overridden for costs incurred in responding to requests for assistance under the state emergency management plan, to provide something like the following: "If a request for assistance is made under the state plan described under s. 166.03(2)(a)1., and if the state plan includes provisions addressing responsibility by the governmental unit receiving the assistance for personnel or equipment costs incurred by a responding agency, then those provisions shall apply to payment for the requested assistance notwithstanding any provisions to the contrary contained in an agreement described under subd. 1."

If something along these lines is done [I recognize this is not the world's best drafting!], perhaps we also want to include a nonstatutory provision directing the department of emergency government to include in the state plan of emergency management, developed and promulgated under s. 166.03(2)(a)1., provisions addressing mutual aid between municipal emergency response agencies, including provisions governing cost allocation between agencies and cost recovery by responding agencies from receiving agencies.

I hope this makes sense and I welcome feedback on these suggestions; please feel free to call or e-mail with questions or comments. Thanks in advance for your consideration.

Terry Hottenroth
for WI Association of Local Health Departments and Boards
(608) 283-1707 or (608) 444-5002

cc: Amy S. Dixon, Boardman Law Firm



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa2066/1

MES...kj...

SENATE AMENDMENT,
TO SENATE AMENDMENT 1,
TO 2003 SENATE BILL 120

Wanted
MON. AM
2/2

1 At the locations indicated, amend the amendment as follows:

2 1. Page 2, line 6: after "s. 66.0301" insert ", or any other agreement between
3 the parties,".

4 2. Page 3, line 15: delete "under s. 66.0301" and substitute "described under
5 subd. 1.". ^{g 2}

6 (END)

