

ENGROSSED 2003 SENATE BILL 120

March 5, 2004 – Printed by direction of ASSEMBLY CHIEF CLERK.

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) and 252.06 (10) (c) of the
4 statutes; **relating to:** creating a public health council, reimbursement for
5 quarantine costs, intrastate mutual aid, requiring use of the incident command
6 system in an emergency, exemption from liability during a state of emergency,
7 and making appropriations.

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 2003 Senate Bill 120 consists of the bill, as affected by Senate Amendment 1 (as affected by Senate Amendments 1 and 2) and Senate Amendment 2.

Content of Engrossed 2003 Senate Bill 120:

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

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

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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 23-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.]

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

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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.

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

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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.

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 23 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 federally recognized American Indian tribes or bands in this state, public safety
8 agencies, and, if created by the secretary of health and family services under s. 15.04
9 (1) (c), the public health advisory committee.

10 **SECTION 2.** 20.435 (1) (c) of the statutes is created to read:

11 20.435 **(1)** (c) *Public health emergency quarantine costs.* A sum sufficient to
12 reimburse local health departments under s. 252.06 (10) (c) 1.

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

14 20.465 **(3)** (e) *Disaster recovery aid; public health emergency quarantine costs.*
15 A sum sufficient to pay the state share of grants to individuals and, to make
16 payments to local governments as defined in 42 USC 5122 (6) under federal disaster
17 recovery programs as authorized in s. 166.03 (2) (b) 8., and to reimburse local health
18 departments under s. 252.06 (10) (c) 2.

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

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

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

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

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

10 (d) “Incident command system” means a functional management system
11 established to control, direct, and manage the roles, responsibilities, and operations
12 of all of the agencies involved in a multi-jurisdictional or multi-agency emergency
13 response, which may include authorities designated by a participating tribe or band.

14 (e) “Local health department” has the meaning given in s. 250.01 (4), and also
15 includes an entity designated by a participating tribe or band as a local health
16 department.

17 (fe) “Tribe or band” means a federally recognized American Indian tribe or band
18 in this state.

19 **(2)** (a) Upon the request of a city, village, town, or county, or a person acting
20 under an incident command system, the personnel of any emergency management
21 program, emergency medical services program, fire department, or local health
22 department may assist the requester within the requester’s jurisdiction,
23 notwithstanding any other jurisdictional provision.

24 (b) If a request for assistance is made under par. (a), payment for the requested
25 services shall be made by one of the following methods:

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1 1. Subject to subd. 2., if an agreement under s. 66.0301, or any other agreement
2 between the parties, for the payment of such services exists, the terms of the
3 agreement shall be followed.

4 2. If an agreement described under subd. 1. specifies that the responding
5 agency is responsible for any personnel or equipment costs incurred in responding
6 to a request for assistance and if a state plan as described under s. 166.03 (2) (a) 1.
7 is in effect and the request for assistance is made under the plan, the governmental
8 unit that receives the assistance is responsible for the personnel or equipment costs
9 incurred by the responding agency if the responding agency meets the personnel and
10 equipment requirements in the plan and if the responding agency requests payment
11 of those costs.

12 3. If no agreement described under subd. 1. for the payment of such services
13 exists, the governmental unit that receives the assistance is responsible for the
14 personnel or equipment costs incurred by the responding agency if the responding
15 agency requests payment of those costs.

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

17 166.02 **(6m)** “Incident command system” means a functional management
18 system established to control, direct, and manage the roles, responsibilities, and
19 operations of all of the agencies involved in a multi-jurisdictional or multi-agency
20 emergency response.

21 **(6r)** “Local health department” has the meaning given in s. 250.01 (4).

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

23 166.03 **(2)** (a) 1. Subject to approval by the governor, develop and promulgate
24 a state plan of emergency management for the security of persons and property
25 which shall be mandatory during a state of emergency. In developing the plan, the

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1 adjutant general shall seek the advice of the department of health and family
2 services with respect to the emergency medical aspects of the plan. The plan shall
3 specify equipment and personnel standards, and shall require the use of the incident
4 command system, and specify the type of incident command system, by all
5 emergency response agencies, including local health departments, during a state of
6 emergency declared under sub. (1) (b) 1. or s. 166.23 (1) or in any other
7 multi-jurisdictional or multi-agency emergency response.

8 2. Prescribe and carry out statewide training programs and exercises to
9 develop emergency management proficiency, disseminate information including
10 warnings of enemy action, serve as the principal assistant to the governor in the
11 direction of emergency management activities and coordinate emergency
12 management programs between counties. The training programs shall include
13 training in managing emergency operations utilizing the incident command system
14 for local government officials, officers, and employees whose duties include
15 responding to emergencies, including officers and employees of local health
16 departments. The adjutant general shall consult with the department of health and
17 family services regarding the provision of incident command system training to local
18 health department personnel. To the extent possible, the adjutant general shall
19 utilize federal funding to provide incident command system training.

20 3. Furnish guidance and develop and promulgate standards for emergency
21 management programs for counties, towns and municipalities, and prescribe
22 nomenclature for all levels of emergency management. The standards shall include
23 a requirement that county, town, and municipal emergency management programs
24 under sub. (4) (a) utilize the incident command system during a state of emergency

ENGROSSED SENATE BILL 120**SECTION 6**

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

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

4 166.03 (5) (a) The head of emergency management services in each county,
5 town and municipality shall for his or her respective county, town or municipality,
6 develop and promulgate emergency management plans consistent with state plans,
7 direct the emergency management program and perform such other duties related
8 to emergency management as are required by the governing body and the emergency
9 management committee of the governing body when applicable. The emergency
10 management plans shall require the use of the incident command system by all
11 emergency response agencies, including local health departments, during a state of
12 emergency declared under sub. (1) (b) 1. or s. 166.23 (1) or in any other
13 multi-jurisdictional or multi-agency emergency response.

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

15 166.03 (10) EXEMPTION FROM LIABILITY. No person who provides equipment or
16 services under the direction of the governor, the adjutant general ~~or~~, the head of
17 emergency management services in any county, town ~~or~~, municipality or federally
18 recognized American Indian tribe or band in this state, the department of health and
19 family services if that department is designated by the governor under s. 166.03 (1)
20 (b) 1., or a local health department acting under s. 251.05 (3) (e) during a state of
21 emergency declared by the governor is liable for the death of or injury to any person
22 or damage to any property caused by his or her actions, except where the trier of fact
23 finds that the person acted intentionally or with gross negligence. This subsection
24 does not affect the right of any person to receive benefits to which he or she would
25 otherwise be entitled under the worker's compensation law or under any pension law,

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1 nor does it affect entitlement to any other benefits or compensation authorized by
2 state or federal law.

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

4 250.042 (1) If the governor declares a state of emergency related to public
5 health under s. 166.03 (1) (b) 1. and designates the department as the lead state
6 agency to respond to that emergency, the department shall act as the public health
7 authority during the period of the state of emergency. The department shall ensure
8 that the emergency operations during the state of emergency are conducted using the
9 incident command system required under s. 166.03 (2) (a) 1. During the period of the
10 state of emergency, the secretary may designate a local health department as an
11 agent of the department and confer upon the local health department, acting under
12 that agency, the powers and duties of the public health authority.

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

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

15 250.07 (1m) The public health council shall monitor implementation of any
16 document developed by the department under sub. (1) (a) and shall advise the
17 governor, the legislature, the department, and the public on progress in
18 implementing the document and coordination of responses to public health
19 emergencies.

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

21 252.06 (10) (c) All expenses incurred by a local health department, or by an
22 entity designated as a local health department by a federally recognized American
23 Indian tribe or band in this state, in quarantining a person outside his or her home
24 during a state of emergency related to public health declared by the governor under

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1 s. 166.03 (1) (b) 1. and not reimbursed from federal funds shall be paid for under
2 either of the following, as appropriate:

3 1. If the governor designates the department as the lead state agency under s.
4 166.03 (1) (b) 1., from the appropriation under s. 20.435 (1) (c).

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

7 **SECTION 15. Nonstatutory provisions.**

8 (1) PUBLIC HEALTH COUNCIL. Notwithstanding the length of terms specified for
9 the members of the public health council under section 15.197 (13) of the statutes,
10 as created by this act, the initial members of the public health council shall be
11 appointed by the first day of the 4th month beginning after the effective date of this
12 subsection for the following terms:

13 (a) Seven members for terms expiring on July 1, 2005.

14 (b) Eight members for terms expiring on July 1, 2006.

15 (c) Eight members for terms expiring on July 1, 2007.

16 (END)