



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 04/11/2007 (Per: DAK)





 Appendix A ... Part 01 of 03

 The 2005 drafting file for LRB-3615

has been transferred to the drafting file for

2007 LRB-1673

 This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2005 DRAFTING REQUEST

Bill

Received: 09/06/2005

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: J.A. Hines (608) 266-7746

By/Representing: Jahnke

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact:

Addl. Drafters:

Subject: Health - public health

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hines@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Human health hazard abatement

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>
/?	dkennedy 12/08/2005	jdyer 12/12/2005		_____			
/P1			pgreensl 12/12/2005	_____	lnorthro 12/12/2005		Local Crime
/1	dkennedy 02/19/2006	jdyer 02/20/2006	jfrantze 02/20/2006	_____	lnorthro 02/20/2006		
				_____	mbarman 02/21/2006		

(Handwritten circles around "mbarman 02/21/2006" and "e-mail only")

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: 09/06/2005

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: J.A. Hines (608) 266-7746

By/Representing: Jahnke

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact:

Addl. Drafters:

Subject: Health - public health

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hines@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Human health hazard abatement

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>
/?	dkennedy 12/08/2005	jdyer 12/12/2005		_____			
/P1			pgreensl 12/12/2005	_____	lnorthro 12/12/2005		Local Crime
/1	dkennedy 02/19/2006	jdyer 02/20/2006	jfrantze 02/20/2006	_____	lnorthro 02/20/2006		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: 09/06/2005

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: J.A. Hines (608) 266-7746

By/Representing: Jahnke

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact:

Addl. Drafters:

Subject: Health - public health

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hines@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Human health hazard abatement

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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	dkennedy 12/08/2005	jdyer 12/12/2005		_____	_____		
----	------------------------	---------------------	--	-------	-------	--	--

/P1		<i>1 2/20 jld</i>	pgreensl 12/12/2005	_____	lnorthro 12/12/2005		
-----	--	-------------------	------------------------	-------	------------------------	--	--

FE Sent For:

2/20

[Signature]

<END>

2005 DRAFTING REQUEST

Bill

Received: **09/06/2005**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **J.A. Hines (608) 266-7746**

By/Representing: **Jahnke**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - public health**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hines@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Human health hazard abatement

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/?	dkennedy	1/11 12/9 jld	12/12 12/12 12/12	12/12 12/12 12/12			

FE Sent For:

<END>

Kennedy, Debora

From: Jahnke, Carolyn
Sent: Wednesday, August 31, 2005 2:09 PM
To: Kennedy, Debora
Subject: Another bill to be drafted

Attachments: WEHA revisions.doc

Hi Debora,

Attached is another bill we need drafted.



WEHA revisions.doc
(39 KB)

It is a continuation of our updates to the public health statutes; however, it is a bit more controversial so we wanted to do it as separate legislation. As always, please feel free to contact me with any questions.

Sincerely,

Carolyn

Carolyn Jahnke
Research Assistant
Clerk, Assembly Committee on Public Health
State Representative J.A. Hines
608.266.7746
carolyn.jahnke@legis.state.wi.us

Proposed revisions to state statutes for abatement of human health hazards under s.254.59 as recommended by the Wisconsin Environmental Health Association, March 31,2005.

Section 1. 251.08 of the statutes is amended to read:

251.08 Jurisdiction of local health department. The jurisdiction of the local health department shall extend to the entire area represented by the governing body of the county, city, village or town that established the local health department, except that the jurisdiction of a county health department does not extend to cities, villages and towns that have local health departments. Cities, towns and villages having local health departments may by vote of their local boards of health determine to come under the jurisdiction of the county health department. No part of any expense incurred under this section by a county health department may be levied against any property within any city, village or town that has a local health department and that has not determined to come under the jurisdiction of the county health department. A county may enact a human health hazard ordinance enforced by the local health department which shall be effective in all towns, cities and villages within the county unless the town, city or village has a separate local health department created under s.251.02. Such county human health hazard ordinance shall be at least as restrictive as s.254.59. Nothing in this section shall prevent prosecution by intergovernmental cooperative agreement between the county and any local municipality with a separate local health department.

Section 2. 254.01(2) of the statutes is amended to read:

254.01(2) "Human health hazard" means a substance, activity or condition that is known to have the potential to cause acute or chronic illness, or ~~death if exposure to the substance, activity or condition is not abated.~~ endangering life, generating or spreading infectious diseases or otherwise injuriously affecting the public's health.

Section 3. 254.59(1) of the statutes is repealed and created to read:

254.59 Human health hazards. (1) Authority of local health officer. A local health officer or designee may immediately and thoroughly investigate any suspected human health hazard upon receiving a complaint or when there is probable cause to believe that a human health hazard exists within the local health department's jurisdiction. Upon consent of the owner or the owner's agent, or occupant a local health officer or designee may enter any property or premises at any reasonable time to inspect, investigate, evaluate, conduct tests, or take specimens or samples as may be reasonably necessary to determine the existence of a human health hazard. If the local health officer or designee is denied entry, the local health officer or designee may seek a special inspection warrant under s.66.0119 authorizing the investigation, evaluation, inspection, testing, or taking of specimens or samples for testing. When a human health hazard poses an immediate threat to an individuals or the public's health, a local health officer or designee may enter the affected property or premises without the consent of the owner, the owner's agent or occupant and without a special inspection warrant to inspect, investigate, or evaluate the conditions on the property or premises as may be reasonably necessary to abate the human health hazard. Anyone refusing to allow entrance at reasonable hours shall forfeit not less than \$100 nor more than \$300.

Section 4. 254.59(2) of the statutes is repealed and created to read:

(2) Abatement Procedure. If a human health hazard is found on private property, the local health officer or designee shall notify the owner or the owner's agent and occupant of the

property or premises by personal service or by mail to the last known address, of the presence of a human health hazard and order its abatement or removal within a reasonable time period, not to exceed 30 days, as specified in the notice. If the property owner, owner's agent or occupant does not comply with the order within the specified time, the local health officer or designee may immediately enter upon the property and abate or remove the human health hazard or may contract to have the work performed. The human health hazard shall be abated in a manner which is approved by the local health officer or designee.

Section 5. 254.59(3) of the statutes is created to read:

(3) Summary Abatement. Where the human health hazard found under subsection (2) poses an immediate threat to an individuals or the public's health, the local health officer or designee shall make a good faith effort to notify the owner or the owner's agent and the occupant of the property by any practical means, confirming the notice in writing as provided in sub.(2) and shall summarily abate or remove the human health hazard unless the owner, the owner's agent or occupant immediately abates or removes the human health hazard.

Section 6. 254.59(4) of the statutes is repealed.

Section 7. 254.59(5) of the statutes is amended to read:

~~(5)~~ (4) Cost of abatement. The cost of abatement or removal of a human health hazard under this ~~section~~ subchapter may be at the expense of the municipality or county of the local health officer and may be collected from the owner, the owner's agent or occupant, or person causing, permitting or maintaining the human health hazard, or may be charged against the premises and, upon certification of the local health officer, assessed by the treasurer of the jurisdiction of the health officer as are other special taxes. In the cases of railroads or other lands not taxed in the usual way, the amount chargeable shall be certified by the clerk to the state treasurer who shall add the amount designated in the certificate to the sum due from the company owning, occupying or controlling the land specified, and the treasurer shall collect the amount as prescribed in Subch. I of Ch. 76 and return the amount collected to the county, town, city or village from which the certificate was received. Anyone maintaining such a human health hazard may also forfeit not more than \$300 \$1,000 or imprisoned for not more than 90 days or both. The only defenses an owner may have against the collection of a tax under this subsection are that no human health hazard existed on the owner's property at the time of abatement, that no human health hazard was corrected by or at the direction of the local health officer or designee on the owner's property, that the procedure outlined in this subsection was not followed, or any applicable defense under s.74.33.

Section 8. 254.59(5) of the statutes is created to read:

(5) Abatement by court action. If the local health officer or designee shall determine that the nature of the human health hazard found under subsection (2) does not pose an immediate threat to an individuals or the public's health if not abated under subsection (2) or (3), the local health officer or designee shall notify the owner or the owner's agent and occupant of the property, by personal service or by mail to the last known address, of the presence of a human health hazard and order its abatement or removal within 30 days. If the human health hazard is not removed or abated within 30 days, the local health officer or designee shall report such fact to the appropriate attorney for the municipality or county who may commence a court action to abate the human health hazard.

13.01(3)

(3) Scope of Home Rule -- Paramount Interest. The home rule amendment to the constitution (article XI, section 3, of the constitution) was adopted to empower cities and villages to determine their own local affairs, subject only to the constitution and legislative enactments of statewide concern. Often, however, a problem cannot be classified as either an exclusively local affair or an exclusively statewide concern; it is a mixture of both. See s. 66.432, stats., and *Thompson v. Kenosha County*, 64 Wis. 2d 673, 683-86 (1974). If a problem is both statewide and local, the validity of an enactment, state or local, depends on which level of government has the "paramount interest" in the problem. See *Michalek v. LeGrand*, 77 Wis. 2d 520 (1977) and *Menzer v. Elkhart Lake*, 51 Wis. 2d 70, 76-8 (1971) (citing *Muench v. Public Service Comm.*, 261 Wis. 492 (1952)). Thus, although the state may legislate, by classes, in an area of paramountly local interest, a city or village may enact its own ordinance (called a charter ordinance) and elect not to be governed by a conflicting state law in an area of local interest. See *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633 (1926) [building height held to be a local affair] and *Van Gilder v. City of Madison*, 222 Wis. 58 (1936). Moreover, a city or village may elect not to be governed by a state law of local concern if that state law does not affect all cities or all villages with uniformity. See *Van Gilder* at 84. Although a state law of statewide concern need not apply to all cities or all villages with uniformity, any classifications made under the state law must be supported by rational justifications. See s. 66.0101 (4), stats.; *Thompson*, at 686-89; and *Gloudeman v. City of St. Francis*, 143 Wis. 2d 780, 789 (Ct. App. 1988). For a list of statutes that the city of Milwaukee has elected not to be governed by, see *Milwaukee City Charter*, Appendix IV.

12/07/05 From Carolyn Jahnke (Rep Hines' office):

may contact Daryl Farmer
Div. of Envir. Health
Eau Claire
715-839-4718

Questions of Mr. Farmer:

① I don't understand intent of proposed amend. to 251.08 - "enforced by local health dept" ? which?

He is trying to permit a co to enact hhh ordinances that could be enforced in a county everywhere but in the juris. of a city town, or village local health dept. OK to place in 254.59, rather than 251.08

② Meaning of proposed 254.59(6) + ? repealing? current 254.59(6)?

Doesn't want to repeal current 254.59(6).
Can eliminate ref. to "private citizen"
Do, as in ① above, referring to enforcement of a co. ordinance



By 12/16, if possible

State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3615/P1

DAK:....
jld

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** ^{Gen} ...; relating to: abatement or removal of human health hazards and
2 providing penalties. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided on a subsequent version.

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

3 SECTION 1. 254.01 (2) of the statutes is amended to read:
4 254.01 (2) "Human health hazard" means a substance, activity or condition
5 that is known to have the potential to cause acute or chronic illness ~~or death if~~
6 ~~exposure to the substance, activity or condition is not abated,~~ to endanger life, to
7 generate or spread infectious diseases, or otherwise injuriously to affect the health
8 of the public. ✓

History: 1993 a. 27.

9 SECTION 2. 254.59 (1) of the statutes is repealed and recreated to read:

1 254.59 (1) LOCAL HEALTH OFFICER OR DESIGNEE; AUTHORITY. Upon receiving a
2 complaint or if there is probable cause to believe that a human health hazard exists
3 within the jurisdiction of a local health department, the local health officer of that
4 jurisdiction or his or her designee may, under the requirements of this subsection,
5 immediately investigate the suspected human health hazard. If the owner or the
6 occupant of a property or premises consents, the local health officer or his or her
7 designee may enter the property or premises at any reasonable time to inspect,
8 investigate, evaluate, conduct tests, or take specimens or samples as may be
9 reasonably necessary to determine the existence of a human health hazard. If the
10 owner or the occupant of a property or premises refuses entry, the local health officer
11 or his or her designee may seek a special inspection warrant under s. 66.0119 to
12 authorize inspection, investigation, evaluation, conduct of tests, or taking of
13 specimens or samples for testing, except that, if a suspected human health hazard
14 poses an immediate threat to the health of an individual or the public, the local
15 health officer or designee may enter an affected property or premises without
16 consent or a special inspection warrant to perform these activities.

****NOTE: Should the last sentence of this paragraph be qualified in some way, as
"if, in the judgment of the local health officer or designee, a suspected human health
hazard . . .?"

****NOTE: Because the first sentence of this subsection, as proposed, gives the local
health officer a broader authority than does the rest of the subsection, I have qualified
the first sentence by "under the requirements of this subsection." Also, I have deleted
"and thoroughly" in that first sentence; the provision is granting authority to the local
health officer to investigate and doesn't need to grant authority to do so thoroughly.

****NOTE: I have placed the penalty provision proposed for this subsection together
with other penalties, under sub. (8).

****NOTE: Please note that I have not drafted mention of an owner's agent in this
provision or in other places in the draft, as proposed. The definition of "owner" under s.
254.55 (2), stats., which applies to s. 254.59, stats., includes an agent and makes this
addition unnecessary.

17 **SECTION 3.** 254.59 (2) of the statutes is amended to read:

1 254.59 (2) [✓] ABATEMENT OR REMOVAL PROCEDURE. ~~If~~ [✓] Except as provided in sub. (3)
2 or (3m), [✓] if a human health hazard is found on private property or premises, the local
3 health officer or his or her designee [✓] shall notify the owner and the any occupant of
4 the property or premises, by registered mail with return receipt requested personal
5 service or by mail to the last known address of the owner [✓] and any occupant, of the
6 presence of the human health hazard and order its abatement or removal within a
7 reasonable time period, not to exceed 30 days of receipt of, as specified in the notice.
8 ~~If the human health hazard is not abated or removed by that date, the local health~~
9 ~~officer shall~~ owner or occupant [✓] fails to comply with the order within the specified
10 time, the local health officer or designee may immediately enter upon the property
11 or premises and abate or remove the human health hazard ~~or,~~ may contract to have
12 the work performed, or may report the failure to abate or remove the human health
13 hazard as specified under sub. (3m). The human health hazard shall be abated in
14 a manner which that is approved by the local health officer. ~~The cost of the~~
15 ~~abatement or removal may be recovered from the person permitting the violation or~~
16 ~~may be paid by the municipal treasurer and the account, after being paid by the~~
17 ~~treasurer, shall be filed with the municipal clerk, who shall enter the amount~~
18 ~~chargeable to the property in the next tax roll in a column headed "For Abatement~~
19 ~~of a Nuisance" as a special tax on the lands upon which the human health hazard was~~
20 ~~abated, and the tax shall be collected as are other taxes. In case of railroads or other~~
21 ~~lands not taxed in the usual way, the amount chargeable shall be certified by the~~
22 ~~clerk to the secretary of administration who shall add the amount designated in the~~
23 ~~certificate to the sum due from the company owning, occupying, or controlling the~~
24 ~~land specified, and the secretary of administration shall collect the amount as~~
25 ~~prescribed in subch. I of ch. 76 and return the amount collected to the town, city, or~~

1 ~~village from which the certificate was received. Anyone maintaining such a human~~
2 ~~health hazard may also be fined not more than \$300 or imprisoned for not more than~~
3 ~~90 days or both. The only defenses an owner may have against the collection of a tax~~
4 ~~under this subsection are that no human health hazard existed on the owner's~~
5 ~~property, that no human health hazard was corrected on the owner's property, that~~
6 ~~the procedure outlined in this subsection was not followed or any applicable defense~~
7 ~~under s. 74.33.~~ ✓

8 History: 1979 c. 102 s. 237, 176; 1981 c. 20 s. 2200; 1987 s. 378; 1993 a. 27 ss. 361, 363, 477; Stats. 1993 s. 254.59; 2003 a. 33.

8 **SECTION 4.** 254.59 (3) of the statutes is created to read:

9 **254.59 (3) SUMMARY ABATEMENT OR REMOVAL.** ✓ If a human health hazard is found
10 on private property or premises ✓ and poses an immediate threat to the health of an
11 individual or the public, the local health officer or his or her designee shall make a
12 good faith effort to notify the owner and any occupant by any practical means, shall
13 confirm the notice in writing by personal service or by mail to the last known address
14 of the owner and any occupant, and shall summarily abate or remove the human
15 health hazard unless the owner or the occupant immediately abates or removes the
16 human health hazard. ✓

****NOTE: Should this provision be qualified in some way, as "... premises and, in the judgment of the local health officer or designee, poses ..."? ✓

17 **SECTION 5.** 254.59 (3m) of the statutes is created to read: ✓

18 **254.59 (3m) ABATEMENT OR REMOVAL BY COURT ACTION.** ✓ If an owner or occupant
19 fails to comply with an order under sub. (2), ✓ and if the local health officer or his or
20 her designee determines that the nature of the human health hazard does not pose
21 an immediate threat to the health of an individual or the public if not abated or
22 removed under sub. (3), ✓ the local health officer or designee may report this fact to the

1 attorney for the applicable city, town, village, or county, who may initiate court action
2 to abate the human health hazard.

***NOTE: Please note that I have numbered this provision as s. 254.59 (3m), rather than s. 254.49 (5), as proposed, in order to group together the three procedures for abatement or removal (s. 254.59 (2), (3), and (3m)). This provision, as proposed, did not seem to be congruent with proposed language for s. 254.59 (2) and (3); it required that, if the human health hazard did not pose an immediate threat to health if not abated, the local health officer or designee notify the owner and occupant of the hazard, order abatement or removal within 30 days, and report failure to abate or remove to the appropriate municipal attorney for action; because the language was proposed as a requirement, the local health officer would have had to act under both sub. (2) and this provision. Because this provision does not involve a human health hazard that poses an immediate threat, it seems, instead, to be an alternative to sub. (2) and, therefore, should not be a requirement but an option if the local health officer does not abate or remove under sub. (2). That is the way I have drafted it. Please review.

***NOTE: This provision seems to place responsibility for enforcement of a state statute on the city, town, or village attorney; was that your intent? Was it also your intent that enforcement be by a county corporation counsel, rather than a district attorney?

3 **SECTION 6.** 254.59 (4) of the statutes is repealed.

***NOTE: I have repealed this subsection, as requested; it seems redundant to other subsections, and the amounts of the penalties conflict with other subsections. Also, the provision seemed to specify what authority a local health officer would have to abate or remove a human health hazard in a city with a general charter, which may be in conflict with the home rule amendment to the Wisconsin Constitution (Article XI, section 3), under which a city ordinance may trump a conflicting state law for matters of paramountly local interest. Please also see my amendment to sub. (6). Please review.

4 **SECTION 7.** 254.59 (5) of the statutes is amended to read:

5 254.59 (5) COST OF ABATEMENT OR REMOVAL. The cost of abatement or removal
6 of a human health hazard under this section subchapter may be at the expense of the
7 municipality city, village, town, or county of the jurisdiction of the local health officer
8 and may be collected from the owner or occupant, or person causing, permitting, or
9 maintaining the human health hazard, or may be charged against the property or
10 premises and, upon certification of the local health officer, may be assessed by the
11 treasurer of the city, town, village, or county of the jurisdiction of the local health
12 officer as are other special taxes. In cases of railroads or other lands not taxed in the
13 usual way, the amount chargeable shall be certified by the clerk of the applicable city,

1 town, village, or county to the secretary of administration who shall add the amount
 2 designated in the certificate to the sum due from the company owning, occupying, or
 3 controlling the land specified, and the secretary of administration shall collect the
 4 amount as prescribed in subch. I of ch. 76 and return the amount collected to the
 5 town, city, or village, or county from which the certificate was received. ~~Anyone~~
 6 ~~maintaining such a human health hazard may also be fined not more than \$300 or~~
 7 ~~imprisoned for not more than 90 days or both.~~ The only defenses an owner may have
 8 against the collection of the cost or assessment of a tax under this subsection are that
 9 no human health hazard existed on the owner's property or premises at the time of
 10 abatement, that no human health hazard was corrected by or at the direction of the
 11 local health officer or his or her designee on the owner's property, that the procedure
 12 outlined in this subsection was not followed, or any applicable defense under s. 74.33.

History: 1979 c. 102 s. 237, 176; 1981 c. 20 s. 2200; 1987 a. 378; 1993 a. 27 ss. 361, 363, 477; Stats. 1993 s. 254.59; 2003 a. 33.

****NOTE: Should the defenses in the last sentence also be applicable to the occupant or other person, from whom the cost may be collected or tax may be assessed?

* ****NOTE: Please note that I have removed the criminal penalty from this provision and placed it in newly created sub. (8).

****NOTE: Please also note that I have clarified who is the "clerk" specified in this subsection and have indicated that the defenses are to both the tax assessment and to collection.

CITY CHARTER. ← CS

13 SECTION 8. 254.59 (6) of the statutes is amended to read:

14 254.59 (6) A 1st class city may, but is not required to, follow the provisions of
 15 this section. A 1st class city may follow the provisions of its charter.

History: 1979 c. 102 s. 237, 176; 1981 c. 20 s. 2200; 1987 a. 378; 1993 a. 27 ss. 361, 363, 477; Stats. 1993 s. 254.59; 2003 a. 33.

****NOTE: Please also see the ****NOTE under sub. (4). The proposal did not acknowledge the existence of this subsection, but I believe it is important, because of the opinions in *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633 (1926) and *Van Gilder v. City of Madison*, 222 Wis. 58 (1936), which held that, although the state may legislate, by classes, in an area of paramountly local interest, a city or village may enact its own ordinance (called a charter ordinance) and elect not to be governed by a conflicting state law in an area of local interest, and that a city or village may elect not to be governed by a state law of local concern if that state law does not affect all cities or all villages with uniformity. Would you want me to add mention of a village to this subsection? Please review.

1 SECTION 9. 254.59 (7) of the statutes is created to read:

2 254.59 (7) OTHER ABATEMENT OR REMOVAL AUTHORITY. A county with a county
3 health department, multiple counties with a multiple county health department, or
4 a city and a county with a city-county health department may enact an ordinance
5 concerning abatement or removal of a human health hazard that is at least as
6 restrictive as this section and that may be enforced in the area of jurisdiction of the
7 relevant single or multiple county health department or city-county health
8 department, as specified in s. 251.08. This subsection may not be construed to
9 prohibit any agreement under s. 66.0301 between a county and a city, town, or village
10 that has a local health department, concerning enforcement under this section.

***NOTE: After talking with Mr. Daryl Farmer, I have replaced language proposed for sub. (6) and for an amendment to s. 251.08, stats., with the above language. Please review.

11 SECTION 10. 254.59 (8) of the statutes is created to read:

12 254.59 (8) PENALTIES. (a) Whoever refuses entry under sub. (1) by a local health
13 officer or his or her designee at reasonable hours shall forfeit not less than \$100 nor
14 more than \$300.

***NOTE: This penalty is very broad; is it intended to be unconditional, as drafted?

15 (b) Whoever maintains a human health hazard that requires abatement or
16 removal under this section may be required to forfeit not more than \$1,000 or may
17 be imprisoned for not more than 90 days or both.

* ***NOTE: This penalty was formerly contained under sub. (5), under current law, and the amount of money (\$300) was specified as a fine. The proposal, besides increasing the amount, refers to it as a forfeiture; is that intentional? (Usually, when a forfeiture is linked with imprisonment, the imprisonment is for a repeat infraction or an intentional violation.) Please note that I have conditioned it by the language "that requires abatement or removal under this section;" this language replaces the word "such" used under sub. (5) in current law. Is this accurate, or should this penalty be imposed only on a person who maintains a human health hazard and who fails to act within any time specified in a notice?

D-NOTE

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3615^{PI}/₂dn
DAK:.....

↑
jld

To Representative Hines:

I am providing this draft to you in preliminary form, because numerous issues and questions have arisen in the course of drafting. I have interspersed ****NOTES in the draft to highlight these questions and issues and to make sure that what I have drafted captures your intent. Please let me know if I can help by answering questions about the drafting or give you other assistance.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3615/P1dn
DAK:jld:pg

December 12, 2005

To Representative Hines:

I am providing this draft to you in preliminary form, because numerous issues and questions have arisen in the course of drafting. I have interspersed ****NOTES in the draft to highlight these questions and issues and to make sure that what I have drafted captures your intent. Please let me know if I can help by answering questions about the drafting or give you other assistance.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Jahnke, Carolyn
Sent: Tuesday, January 03, 2006 9:33 AM
To: Kennedy, Debora
Subject: FW: Human Health Hazard Statute Draft

Debora,

I hope you had a wonderful holiday. Here are the responses to the drafter's notes you had. I will be getting to you later this week with the additional things we want added to the bill. Thanks for your hard work on this!

Carolyn

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

From: Darryll Farmer [mailto:Darryll.Farmer@co.eau-claire.wi.us]
Sent: Friday, December 23, 2005 11:22 AM
To: Jahnke, Carolyn
Cc: ngrana@charter.net; TSCHNEIDER@cityofmadison.com; Clark@co.dane.wi.us; berg.ron@co.la-crosse.wi.us; Rossow, Amy; tewittkopf@mail.co.marathon.wi.us; gchdeh@tds.net
Subject: Human Health Hazard Statute Draft

Carolyn:

The following are comments regarding the draft LRB-3615/P1 done by Debra Kennedy:

- ✓ 1. Page two:
We agree with the addition of "if, in the judgement of the local health officer or designee" to line 14.
- ✓ The changes made as mentioned in her notes on the bottom of page two are acceptable as long as the definition of owner in s.254.55 (2) applies to s. 254.59.
- ✓ 2. Page four:
We agree with the addition as proposed in the note on this page for s.254.59 (3).
- ✓ 3. Page five:
We agree with the creation of (3m) as stated in the note. It is our intention that enforcement can be done by a corporation counsel, city, town or village attorney.
- ✓ We agree with the note referencing repeal of s.254.59 (4).
4. Page six:
s 254.59(5)
✓ We agree that "occupant" should be added to the last sentences from whom cost may be collected. We agree with the other notes regarding (5).
s.254.59 (6) It is preferred that reference to village not be made in (6).
- ✓ 5. Page 7:
It is suggested that "each" be added to line three to clarify that the city and county are not required to adopt identical ordinances or that each has the option to adopt an ordinance.
..... with a city-county health department may each enact.....
I spoke to Debra Kennedy on this matter and she suggested this change for clarification.
- ✓ 6. Section 10, page 7:
Suggest adding the following to s.254.59 (8) (a):
....at reasonable hours in response to a human health hazard shall forfeit...
- ✓ 7. s254.59 (8) (b):
Agree that this should be changed from a forfeit to pay a fine.
The other changes in the draft are acceptable and meet the objective to clarify the existing statute for human health hazard abatement.
Finally, it is ok with us if this is included with the other changes to public health statutes being requested by the Department of Health and Family Services.

Please convey our appreciation to Representative Hines for sponsoring these important changes that will enhance public health protection in Wisconsin. If you have any questions or if we missed any points, please let me know.
Thanks for your help and Happy Holidays, Darryll

Darryll Farmer
Director of Environmental Health
Eau Claire City - County Health Department 720 Second Avenue, Eau Claire, Wis. 54703
Phone: (715)839-4718

Jahnke, Carolyn

From: Sweet, Richard
Sent: Friday, January 20, 2006 10:26 AM
To: Jahnke, Carolyn
Subject: RE: LRB-3062/2

A **separate bill draft** would include the following:

- ✓ 1. Repeal s. 251.06(1m), but grandfather-in the local health officers who currently hold office under that subsection.
- ✓ 2. Provide statutory recognition of registered nutritionists, public health educators, and public health epidemiologists who work with local health departments. Meg was going to come up with some language on this. It could be as simple as saying that local health departments may employ these types of professionals; or it could be more elaborate.
- ✓ 3. Provide that physicians who are under contract with local health departments are considered to be state employees (for purposes of representation by the state in lawsuits, limitation and payment of judgments) when working with the local health department.
- ✓ 4. Meg was going to provide language on community health improvement plans.
- ✓ 5. Large parts of ch. 146 would be moved to other parts of the statutes, possibly including an EMS chapter in the public health statutes. We discussed meeting and going through ch. 146 section-by-section to determine where each section should be placed.

Most of the above provision that are going into the separate bill need some fleshing-out, but I wanted to put them in this e-mail so we don't lose track of them.

Dick Sweet

Richard Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.state.wi.us

Kennedy, Debora

From: Jahnke, Carolyn
Sent: Wednesday, January 25, 2006 8:31 AM
To: Kennedy, Debora
Subject: Discussion today

Hi Debora,

Just wanted to give you a heads up that this is some of the stuff we are going to be looking at for today. See you at 9.

Carolyn

1. Repeal s. 251.06(1m), but grandfather-in the local health officers who currently hold office under that subsection.
2. Provide statutory recognition of registered nutritionists, public health educators, and public health epidemiologists who work with local health departments. Meg was going to come up with some language on this. It could be as simple as saying that local health departments may employ these types of professionals; or it could be more elaborate.
3. Provide that physicians who are under contract with local health departments are considered to be state employees (for purposes of representation by the state in lawsuits, limitation and payment of judgments) when working with the local health department.
4. Meg was going to provide language on community health improvement plans.
5. Large parts of ch. 146 would be moved to other parts of the statutes, possibly including an EMS chapter in the public health statutes. We discussed meeting and going through ch. 146 section-by-section to determine where each section should be placed.

1/25/06 Meg Taylor, Dick Sweet, Carolyn
Jahnke, Patty 266-8154
267-1440

- 3615

AB 881 v. 4065/PI

- Meg?
- 1) 251.06 - agencies (1m)
H officer does not need to meet
Want to repeal 251.06 (1m), but grandfather in existing health officer -
just only applies officers in position on eff date of 2 hired on
 - 2) Public health professionals - ^{permissive to have} add nutritionists employ
(~~regulated~~ by DORL) ^{see} 448.70
Certified
 - Public health educator - national credentialing
(look at WIC provisions) ^{CHES} _{th educator}
 - local bd of health sets qualification for ph educators 251.06 (3)(e)
"Subordinate personnel may include ... public health educators (leaves to discretion of local health officer)
 - 3) Indemnification 252.04(9)(b)
Put same lang in ch 251
Expand lang ~~and put in~~ in accordance w/ written protocols of the Dept - for program + services provided by the local health dept



④ New ch chapter 256 - EMS

146.52
146.53

.55 } all through here
.56 }

.58

.70 (911)

BUT NOT 146.81

.301

Other provisions → other public health statute
DS + Meg will provide me w/ a list

.185

.19

.157

.995

other chapters

⑤ 251.04 251.05 - include CHIP process

AM 251.05(3) (intro)
in developing a chip



Overview of additional Issues from DHFS for LRB 3062/2

- 251.06. Local health officer; qualifications; duties (1m). Notwithstanding sub. (1), in a county with a county department under s.46.23, the local health officer need not meet the requirements under sub. (1) if that county department employs at least one person who meets the requirements under sub. (1).

A DHFS legal opinion states that this does allow a Health Officer of the Health Department in a Combined Human Services Agency, need not meet the qualifications. The intent of this provision was allowing the Human Services Head, who is the Health Officer, to use the qualifications of the Nursing or Environmental Supervisor. This does not weaken the health department. With this new legal opinion, WI will now allow a lesser qualified health department head to use the qualifications of another to increase the level of the department,

- Public Health Professionals are currently defined as Registered Nurses and Registered Sanitarians by statute.

We ask that qualifications with permissive language be added for Registered Nutritionists, Public Health Educators, and Public Health Epidemiologists.

*Propose to
amend statute
for the following*

252.04
(9)(b)



*require
medical
oversight*

251.07
ok?

- Indemnification for Medical Advisors. Currently a Medical Advisor for a Local Health Department may be indemnified for communicable disease orders by the Chief Medical Officer, but only in certain situations.

DHFS asks that this be broadened to include other activities that require Medical Oversight, such as, dispensing Nicotine Patches.

- "251.04. Local board of health; powers and duties. (6)(a) Assess public health needs and advocate for the provision of reasonable and necessary public health services. (b) Develop policy and provide leadership that fosters local involvement and commitment, that emphasizes public health needs and that advocates for equitable distribution of public health resources and complementary private activities commensurate with public health needs.

lev of a CHIP, in addition

251.05. Local health department; level of service; duties. (3)(c). Involve key policymakers and the general public in determining a set of high priority public health services and assure access to these services to every member of the community. *based upon community needs*

DHFS asks that this language be strengthened to designate a Community Health Improvement Plan. This CHIP process will give clear guidance as to the steps required to include all of the needs assessment language and

the community involvement, the strong plan and the evaluation and re-direction of programming as needs change.

- 146 includes many "miscellaneous public health provisions".

DHFS asks that these public health programs be moved to the correct place in statutes and increase their visibility from miscellaneous. ~~AN~~ *an* example is the EMS statutes. Please consider EMS and Trauma 146.301, and the .5 series, Poison Control 146.57, 146.185 Minority Health, 146.38 Confidentiality, 146.81 Health care Records, Rural Dental 146.65, and 146.19 Cooperative American Indian Health Projects.

- 254.59 (2) While human health hazard is Clarify the human health hazard language, beach testing, registered mail, and enforcement.

Kennedy, Debora

From: Taylor, Margaret
Sent: Thursday, January 26, 2006 3:16 PM
To: Kennedy, Debora; Sweet, Richard
Cc: Jahnke, Carolyn
Subject: [Possible Spam] Proposed Additions/Changes to include in LRB Draft 3615 (Human Health Hazards)

This is in follow-up to our meeting on January 25, 2006. Please find below the statutory citations for public health programs that DHFS asks to be moved out of Chapter 146 - Miscellaneous Health Provisions:

Move the following EMS related citations out of Chapter 146 and into it's own Chapter (possibly Ch. 256):

- ✓ 146.301 - Refusal or delay of emergency service. *no X refs*
- ✓ 146.50 - Emergency medical services personnel; licensure; certification; training. *(9) Oct 25*
- ✓ 146.51 - Denial, nonrenewal and suspension of license, training permit or certification based on certain delinquency in payment.
- ✓ 146.52 - Denial, nonrenewal and revocation of license, certification or permit based on tax delinquency.
- ✓ 146.53 - State emergency medical services activities.
- ✓ 146.55 - Emergency medical services programs.
- ✓ 146.56 - Statewide trauma care system.
- ✓ 146.58 - Emergency medical services board. *no X refs*
- ✓ 146.70 - Statewide emergency services number.

Move the following two citations out of Chapter 146 and into Chapter 250 - Health; Administration and Supervision. DHFS is requesting that this be it's own section under Ch. 250, using a title like - the elimination of, or reduction of, health disparities:

- ✓ 146.185 - Minority Health *250.20 (1), (2) to (4)*
- ✓ 146.19 - Cooperative American Indian health services *250.20 (5) + (6)*

Note: One of the goals in our State Health Plan is the elimination of health disparities in the State of Wisconsin, so our Division Administrator has requested this change to increase their visibility from miscellaneous.

Move the following two citations out of Chapter 146 and into Chapter 255 - Chronic Disease and Injuries, under Sub-chapter III - Injury Prevention and Control:

- ✓ 146.57 - Statewide poison control system *- 255.35*
- ✓ 146.995 - Reporting of wounds and burn injuries. *255.40*

We appreciate your help. If you should have any questions please feel free to contact me or Patty Bollig at 267-1440.

Thank you!

Meg Taylor, Director
Bureau of Local Health Support
and Emergency Medical Services
608-266-8154

* * * * *

NOTICE: This E-mail and any attachments may contain confidential information.

Use and further disclosure of the information by the recipient must be consistent with applicable laws, regulations and agreements. If you received this E-mail in error, please notify the sender; delete the E-mail; and do not use, disclose or store the information it contains.

KEY TO CHANGES

- 3615

✓ 256.01 Definitions (cr. title)

✓ 256.04 EMS Board 146.58

✓ 256.08 State ems activities 146.53

✓ 256.12 Ems programs 146.55

✓ 256.15 Ems personnel 146.50

✓ 256.17 Denial, ^{non}renewal 146.51

✓ 256.18 Denial, nonrenewal 146.52

✓ 256.25 Statewide trauma care system 146.56

✓ 256.30 Refusal or delay ✓ 146.301

✓ 256.35 Statewide emergency services number 146.70

✓ 146.185 (1), (2) to (4) → 250.20 (1), (2) to (4)

✓ 146.19 (2), (4) → 250.20 (5), (6)

✓ 146.57 → 255.35

✓ 146.975 → 255.40

256.08(1)

-3615

DEFINITIONS

256.01

- RN (1) Ambulance 146.50 (1)(am) ✓
- " (2) Ambulance service 146.55 (1)(a)
- " (3) Ambulance service provider 146.50 (1)(c) ✓
- " (4) Board 146.53 (1)(b)
- " (5) Emergency medical technician 146.50 (1)(e)
- " (6) EMT - basic 146.50 (1)(f)
- " (7) EMT - intermediate 146.50 (1)(g)
- " (8) EMT - paramedic 146.50 (1)(h)
- " (9) First responder 146.50 (1)(hm)
- CR (10) "Hospital" has meaning given in 50.35(2).
- FN (11) Medical director 146.50 (1)(j) ✓
- " (12) Nonprofit corporation 146.50 (1)(k)

146.19 (1) Intro. → 250.20 (1) Intro.
 146.185 (1)(a) AP. American → 250.20 (1)(a)
 " (1)(b) Am. Indian → " (1)(b)
 " (1)(c) Asian → " (1)(c)
 " (1)(d) Econ. disad. → " (1)(d)
 " (1)(e) Hispanic → " (1)(e)
 146.19 (1)(a) Inter-tribal org → " (1)(f)
 146.185 (1)(f) minority Grp mem. → " (1)(g)
 " (1)(g) non profit corp. → " (1)(h)
 " (1)(h) poverty line → " (1)(j) ← "Other ag" 146.19 (1)(b) →
 " (1)(i) State ag. → " (1)(k) ← 250.20 (1)(i)
 " (2) to (4) → (2) to (4) ← "Tribal ag." 146.19 (1)(c) → 250.20 (1)(l)
 146.19 (1) "Tribe" → 250.20 (1)(m)