

1987 Assembly Bill 99

Date of enactment: April 21, 1988
Date of publication: May 2, 1988

1987 Wisconsin Act 342 (Vetoed in Part)

AN ACT to renumber 144.76 (12); to amend 15.01 (1) and (2), ~~81.40 (intro)~~, 893.82 (2) (d) and 895.46 (1) (e); and to create 15.105 (20), 20.505 (2) (i) and (4) (j) and (jm), 59.07 (145), 144.76 (12) (b), 166.20 and 166.21 of the statutes, relating to the creation of a state emergency response commission, claims against members of the commission, hazardous chemical information and notification, allowing suits, providing a penalty, granting rule-making authority and making appropriations. **Vetoed in Part**

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

SECTION 1. 15.01 (1) and (2) of the statutes are amended to read:

15.01 (1) "Board" means a part-time body functioning as the policy-making unit for a department or independent agency or a part-time body with policy-making or quasi-judicial powers and includes the state emergency response commission.

(2) "Commission" means a 3-member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the tax appeals commission which shall consist of 5 members, the sentencing commission which shall consist of 17 members, the Wisconsin waterways commission which shall consist of 5 members and the Fox river management commission which shall consist of 7 members. A Wisconsin group created for participation in a continuing interstate body shall be known as a "commission", but is not a commission for purposes of s. 15.06. The state emergency response commission created under s. 15.105 (20) shall be known as a "commission", but is not a commission for purposes of s. 15.06.

SECTION 2. 15.105 (20) of the statutes is created to read:

15.105 (20) STATE EMERGENCY RESPONSE COMMISSION. There is created a state emergency response commission which is attached to the department of administration under s. 15.03. The state emergency response commission shall consist of one representative of the department of administration, division of emergency government, one representative of the department of health and social services, one representative of the department of transportation, one representative of the department of natural resources, ~~one representative of the department of justice,~~ one representative each from fire fighting, law enforcement and public or community health services, 2 representatives of industry, one representative of small business, as defined in s. 15.227 (3), 2 representatives who are elected officials or employees of county and municipal government, one representative of a labor organization and one representative of an environmental organization. The members of the commission shall serve at the pleasure of the governor. **Vetoed in Part**

SECTION 3. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	<u>1987-88</u>	<u>1988-89</u>
20.505 Administration, department of		
(2) EMERGENCY GOVERNMENT SERVICES		
(i) Emergency planning and reporting;		
administration	PR A 21,200	127,100

SECTION 4. 20.505 (2) (i) and (4) (j) and (jm) of the statutes are created to read:

20.505 (2) (i) *Emergency planning and reporting; administration.* From the moneys received by the state emergency response commission from fees assessed under s. 166.20 (7), the amounts in the schedule for emergency planning, notification and response and reporting activities under s. 166.20 and administration of the grant program under s. 166.21.

(4) (j) *State emergency response commission; gifts and grants.* All moneys received as gifts and grants by the state emergency response commission, to be used for the purposes for which made.

(jm) *State emergency response commission; emergency planning grants.* All moneys received by the state emergency response commission from fees assessed under s. 166.20 (7), except moneys appropriated under sub. (2) (i), for the payment of grants under s. 166.21.

SECTION 5. 59.07 (145) of the statutes is created to read:

59.07 (145) LOCAL EMERGENCY PLANNING COMMITTEES. (a) Shall create a local emergency planning committee, which shall have the powers and duties established for such committees under 42 USC 11000 to 11050 and under ss. 166.20 and 166.21. The board shall control all expenditures by any committee appointed by the board under this paragraph.

(b) Implement programs and undertake activities which are designed to prepare the county to cope with emergencies involving the accidental release of hazardous substances and which are consistent with but in addition to the minimum requirements of s. 166.20 and 42 USC 11000 to 11050.

SECTION 6. 144.76 (12) of the statutes is renumbered 144.76 (12) (a).

SECTION 7. 144.76 (12) (b) of the statutes is created to read:

144.76 (12) (b) This section applies to all releases of hazardous substances for which a notification must be made under s. 166.20 (5) (a) 2.

SECTION 8. 166.20 of the statutes is created to read:

166.20 Hazardous substances information and emergency planning. (1) DEFINITIONS. In this section and s. 166.21:

(a) "Commission" means the state emergency response commission.

(b) "Committee" means a local emergency planning committee created by the commission in accordance with 42 USC 11001 (c).

(c) "Facility" means the buildings and contiguous area of a single location which is owned, operated or controlled by the same person and used for conducting the activities of a public or private agency, or as defined in 42 USC 11049 (4).

(d) "Facility plan" means a plan for response to the release of hazardous substances from a specific facil-

ity, prepared as a component of a local emergency response plan under sub. (5) (a) 1 and 42 USC 11003.

(e) "Federal act" means 42 USC 11000 to 11050.

(f) "Hazardous chemical" means a hazardous chemical covered under 42 USC 11021 and 11022 as defined under 29 CFR 1910.1200 (c).

(g) "Hazardous substance" means an extremely hazardous substance included in the list published by the administrator of the U.S. environmental protection agency under 42 USC 11002 (a) (2) or a hazardous substance as defined under 42 USC 9601 (14) or designated by the administrator of the U.S. environmental protection agency under 42 USC 9602 (a).

(h) "Private agency" means a privately owned and operated research facility or educational institution.

(i) "Public agency" means a state or local office, agency, board, commission, committee, council, department, research facility, educational institution or public body corporate or politic created by constitution, law, ordinance, rule or order, or a governmental or quasi-governmental corporation.

(j) "Threshold quantity" means a designated quantity of:

1. A hazardous chemical which, if used by or present at a facility, makes the facility subject to the requirements of sub. (5) (a) 3; or

2. A toxic chemical which, if used by or present at a facility, makes the facility subject to the requirements of sub. (5) (a) 4.

(k) "Toxic chemical" means a toxic chemical covered under 42 USC 11023 (c).

(2) DUTIES OF THE COMMISSION. The commission shall:

(a) Carry out all requirements of a commission under the federal act.

(b) Promulgate rules necessary for the implementation of the federal act.

(c) Oversee the implementation of local emergency response plans by committees and provide assistance to committees in executing their duties under sub. (3) (b) to the greatest extent possible.

(d) Administer the grant program under s. 166.21.

(3) DUTIES OF COMMITTEES. A committee shall:

(a) Carry out all requirements of a committee under the federal act.

(b) Upon receipt by the committee or the committee's designated community emergency coordinator of a notification under sub. (5) (a) 2 of the release of a hazardous substance, take all actions necessary to ensure the implementation of the local emergency response plan.

(c) Consult and coordinate with the county board, the county and local heads of emergency government services designated under s. 166.03 (4) (a) or (b) and the county emergency government committee designated under s. 166.03 (4) (c) in the execution of the local emergency planning committee's duties under this section.

(4) DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES. The department of natural resources shall:

(a) Upon receipt of a notification under sub. (5) (a) 2 or s. 144.76 (2) of the release of a hazardous substance, provide all information contained in the notification to the commission.

(b) Have the same powers and duties at the time of a release of a hazardous substance as are given to it under s. 144.76, including the investigation of releases of hazardous substances, the repair of any environmental damage which results from the release and the recovery of costs from responsible parties. The department of natural resources may also, at the time of a release of a hazardous substance, identify and recommend to the commission and the committee measures to lessen or mitigate anticipated environmental damage resulting from the release.

(c) Use the information contained in toxic chemical release forms submitted under sub. (5) (a) 4 in the planning and implementation of programs related to the regulation, monitoring, abatement and mitigation of environmental pollution.

(5) NOTIFICATION AND REPORTING REQUIREMENTS. (a) 1. All facilities in this state covered under 42 USC 11002 shall comply with the emergency planning and notification requirements under 42 USC 11002 and 11003.

2. All facilities in this state covered under 42 USC 11004 shall comply with the notification requirements of 42 USC 11004. Notification of the department of natural resources of the discharge of a hazardous substance under s. 144.76 (2) shall constitute the notification of the commission required under 42 USC 11004 if the notification contains the information specified in 42 USC 11004 (b) (2) or (c).

3. All facilities in this state covered under 42 USC 11021 and all public agencies and private agencies in this state at which a hazardous chemical is present at or above an applicable threshold quantity shall comply with the reporting requirements under 42 USC 11021 and 11022.

4. All facilities in this state subject to 42 USC 11023 and all public agencies and private agencies in this state at which a toxic chemical is used at or above an applicable quantity level shall comply with the toxic chemical release form requirements under 42 USC 11023. All facilities covered by this subdivision shall submit copies of all toxic chemical release forms to the department of natural resources.

5. The reporting procedures for trade secrets under 42 USC 11042 shall apply to all facilities in this state subject to the requirements under subd. 1, 3 or 4. For the purposes of applying this subdivision to public agencies and private agencies, the commission shall have the powers and duties granted to the administrator of the U.S. environmental protection agency under 42 USC 11042.

6. All facilities in this state subject to the requirements under subd. 3 or 4 shall comply with the procedures for providing information under 42 USC 11043.

(b) No public or private agency is subject to the requirements under par. (a) 3 to 6 before January 1, 1990.

(6) THRESHOLD QUANTITIES. Threshold quantities for the facilities of public agencies and private agencies shall be identical to the threshold quantities established by the federal act or by regulations promulgated under the federal act.

(7) FEES. (a) The commission shall establish, by rule, the following fees:

1. An emergency planning notification fee to be paid by a facility when it makes the emergency planning notification required under sub. (5) (a) 1.

2. An inventory form fee to be paid annually by a facility when it submits the emergency and hazardous chemical inventory forms required under sub. (5) (a) 3.

(b) The commission may establish, by rule, a surcharge to be paid by facilities which fail to pay the fees under par. (a) in a timely manner. The surcharge under this paragraph shall not exceed 20% of the original fee.

(c) Beginning on the effective date of this paragraph [revisor inserts date], and continuing until the effective date of rules promulgated under par. (a):

1. The fee required under par. (a) 1 is \$800. Facilities which have made the emergency planning notification required under sub. (5) (a) 1 before the effective date of this subdivision [revisor inserts date], shall submit an emergency planning notification fee of \$800 no later than 2 months after the effective date of this subdivision [revisor inserts date].

2. The fee required under par. (a) 2 is:

a. For facilities submitting inventory forms listing one to 100 hazardous chemicals, \$100.

b. For facilities submitting inventory forms listing 101 to 500 hazardous chemicals, \$150.

c. For facilities submitting inventory forms listing more than 500 hazardous chemicals, \$300.

(d) Facilities, including facilities engaged in farming, as defined in s. 102.04 (3), employing fewer than the equivalent of 10 full-time employees are exempt from the fees under par. (a).

(e) All moneys received under this subsection shall be credited to the appropriations under s. 20.505 (2) (i) and (4) (jm).

(8) ENFORCEMENT. The department of justice, at its own discretion or at the request of the commission or the district attorney for the county in which the violation is alleged to have occurred, shall enforce subs. (2) to (7) and rules promulgated under subs. (2) to (7). In addition to any other relief granted, the court may grant injunctive relief to restrain violations of subs. (2) to (7) and rules promulgated under subs. (2) to (7).

(9) SUITS. (a) Except as provided in par. (b):

1. Any person may commence a civil action on his or her behalf against any of the following:

a. Any person for failure to submit a follow-up emergency notice under 42 USC 11004 (c), as applied under sub. (5) (a) 2.

b. Any person for violation of sub. (5) (a) 3 or 4.

c. The commission for failure to render a decision in response to a petition under 42 USC 11042 (d), as applied under sub. (5) (a) 5, within 9 months after receipt of the petition.

d. The commission for failure to provide a mechanism for public availability of information in accordance with 42 USC 11044 (a), as applied under sub. (2) (a).

e. The commission for failure to respond to a request for information under 42 USC 11022 (e) (3), as applied under sub. (2) (a).

2. The commission or any county, city, village or town may commence a civil action against any person for failure to do any of the following:

a. Provide notification to the commission under 42 USC 11002 (c), as applied under sub. (5) (a) 1.

b. Submit the information required under 42 USC 11021 (a) or 11022 (a), as applied by sub. (5) (a) 3.

c. Make available information requested under 42 USC 11021 (c), as applied under sub. (5) (a) 3.

3. The commission or any committee may commence an action against any person for failure to provide the information required under 42 USC 11003 (d), as applied under sub. (5) (a) 1 or any information required under 42 USC 11022 (e) (1), as applied under sub. (5) (a) 3.

(b) 1. No action may be commenced against any person other than the commission under this subsection under any of the following circumstances:

a. If fewer than 60 days have elapsed since the plaintiff gave notice of the alleged violation to the commission and to the alleged violator.

b. If the department of justice has commenced and is diligently prosecuting a civil action against the alleged violator, but in any such action any resident of this state may intervene as a matter of right.

2. No action may be commenced against the commission under this subsection if fewer than 60 days have elapsed since the plaintiff gave notice of the action to the commission.

(c) 1. In addition to any other relief granted, the court may grant injunctive relief to restrain the violations alleged in the pleadings.

2. If the court finds that the commission has failed to perform any mandatory, nondiscretionary act or duty as alleged in the pleadings, the court shall issue an order directing the commission to perform the act or duty within the time limit specified for the act or duty.

(d) In issuing any final order in any action brought under par. (a), the court shall award costs of litigation,

~~including reasonable attorney and expert witness fees, to the plaintiff if he or she prevails, and the court may do so if it determines that the outcome of the controversy is consistent with the relief sought by the plaintiff irrespective of the formal disposition of the civil action.~~

**Vetoed
in Part**

(e) Nothing in this subsection restricts any right which any person or class of persons may have under any other statute or common law.

(10) VENUE. A proceeding under sub. (8) or (9) may be brought in the circuit court for Dane county, for the county in which the defendant is located or for the county in which the violation is alleged to have occurred.

(11) PENALTIES. (a) Any person who violates sub. (5) (a) 1, 2 or 4 or the emergency and hazardous chemical inventory form requirements of 42 USC 11022, as applied under sub. (5) (a) 3, shall forfeit not more than \$25,000. Total forfeitures for the failure of a facility to report multiple releases of hazardous substances covered under 42 USC 11004, as applied under sub. (5) (a), shall not exceed \$75,000 per day of offense.

(b) Any person who knowingly and wilfully fails to report the release of a hazardous substance covered under 42 USC 11004 as required under sub. (5) (a) 2, shall:

1. For the first offense, be fined not more than \$25,000 or imprisoned for not more than 2 years or both.

2. For the 2nd and subsequent offenses, be fined not more than \$50,000 or imprisoned for not more than 2 years or both.

(c) Any person who violates sub. (5) (a) 5 or 6 or the material data sheet requirements of 42 USC 11021, as applied under sub. (5) (a) 3, shall forfeit not more than \$10,000.

(d) Any person who knowingly and wilfully releases a trade secret entitled to protection under 42 USC 11042, as applied under sub. (5) (a) 5, shall be fined not more than \$20,000 or imprisoned for not more than one year in the county jail or both.

(e) For the purposes of this subsection, each day of continued violation constitutes a separate offense.

SECTION 9. 166.21 of the statutes is created to read:

166.21 Emergency planning grants. (1) GENERAL.

(a) There is created an emergency planning grant program for the purpose of assisting committees to comply with the requirements of s. 166.20 and the federal act.

(b) Any committee may apply annually to the commission for an emergency planning grant. Applications shall be made in the manner specified by the commission.

(2) ELIGIBLE COSTS. Eligible costs for emergency planning grants are limited to the cost of all of the following:

**Vetoed
in Part**

(a) Developing emergency response plans required under 42 USC 11003, including the cost of developing facility plans.

(b) Reviewing, exercising and implementing emergency response plans required under 42 USC 11003.

(bm) Fifty percent of the costs of computers and emergency response equipment, but not to exceed \$6,000.

(c) Committee operation and administration, including the cost of supplies and equipment reasonably necessary for committee operation and administration, but excluding the cost of computers and emergency response equipment.

(d) Any other activity of the committee required under s. 166.20 or the federal act.

(3) GRANT AMOUNT. (a) Emergency planning grants shall not exceed the sum of the following amounts:

1. For each new facility plan completed by the committee and approved by the commission in the period covered by the grant, \$900.

2. All costs incurred by the committee in the period covered by the grant related to sub. (2) (b) to (d).

(b) The commission shall reduce the grant amount calculated under par. (a) by the amount of any other gifts or grants received by the committee in the period covered by the grant for costs incurred by the committee related to sub. (2).

(c) Notwithstanding sub. (2), the commission shall deny that portion of a grant calculated under par. (a) 2 if the commission determines that the committee has failed to review, exercise or implement a local emergency response plan as required under s. 166.20 or the federal act.

(d) The commission may, by rule, adjust the amount which may be paid under par. (a) 1 for the preparation of facility plans if it determines that the amount which may be paid under par. (a) 1 is not sufficient to cover reasonable costs associated with the preparation of facility plans. Rules promulgated under this paragraph shall not apply to a grant made before the first day of the 13th month after the effective date of this paragraph [revisor inserts date].

(4) PAYMENT OF GRANTS. (a) Annually, the commission shall review all applications received under this section and make grants to committees from the appropriation under s. 20.505 (4) (jm). If insufficient funds are available to pay all approved grants, the commission shall prorate the available funds among the eligible applicants in proportion to the approved grant amounts. A prorated payment shall be deemed full payment of the grant.

(b) If funds are sufficient to fully fund all costs calculated under sub. (3) (a) 1 but not all costs calculated under sub. (3) (a) 2, the commission shall fully fund all costs calculated under sub. (3) (a) 1 and prorate the remaining funds for the costs calculated under sub. (3) (a) 2. If funds are insufficient to fully fund all costs calculated under sub. (3) (a) 1, the commission shall

prorate all funds for the costs calculated under sub. (3) (a) 1 and deny funding for the costs calculated under sub. (3) (a) 2.

(5) PAYMENT IN ADVANCE. (a) The commission may pay a portion of a grant before the end of the period covered by the grant if a committee requests the advance payment and if the commission determines that the necessary funds are available and that the advance payment will not result in insufficient funds to pay other grants.

(b) The commission may pay an amount up to 50% of anticipated eligible costs covered by a grant up to 12 months before the end of the period covered by the grant. The commission may pay an additional amount up to 25% of anticipated eligible costs up to 6 months before the end of the period covered by the grant. The commission shall determine anticipated eligible costs from a budget submitted by the committee at the time that the committee requests payment in advance.

(c) If a committee receives advance payments under this subsection which exceed the total grant amount calculated under sub. (3), the commission shall subtract the amount of the overpayment from the amount of a grant paid to that committee in the next year that the committee receives a grant.

~~SECTION 10. 814.04 (intro.) of the statutes is amended to read:~~

~~814.04 Items of costs. (intro.) Except as provided in ss. 166.20 (2) (d), 814.025, 814.245 and 895.035 (4), when allowed costs shall be as follows:~~

SECTION 11. 893.82 (2) (d) of the statutes is amended to read:

893.82 (2) (d) "State officer, employe or agent" includes an officer, employe or agent of any nonprofit corporation operating a museum under a lease agreement with the state historical society and a member of a local emergency planning committee appointed by a county board under s. 59.07 (145) (a).

SECTION 12. 895.46 (1) (e) of the statutes is amended to read:

895.46 (1) (e) Any nonprofit corporation operating a museum under a lease agreement with the state historical society, and all officers, directors, employes and agents of such a corporation, and any local emergency planning committee appointed by a county board under s. 59.07 (145) (a) and all members of such a committee, are covered by this subsection.

SECTION 13. **Nonstatutory provisions; State emergency response commission.** Notwithstanding section 15.105 (20) of the statutes, as created by this act, the governor shall appoint the members serving on the effective date of this SECTION as members of the state emergency response commission created by executive order number 13, dated April 15, 1987, to serve as the initial members of the state emergency response commission under section 15.105 (20) of the statutes, as created by this act.

Vetoed
in Part

SECTION 14. Nonstatutory provisions; position authorizations. The authorized FTE positions for the department of administration are increased by 2.0 FTE PRO permanent positions, and by 1.0 FTE PRO project position beginning on the effective date of this

~~SECTION~~ and ending 2 years after the effective date of this ~~SECTION~~, to be funded from the appropriation under section 20.505 (2) (i) of the statutes for the purpose of administration of the program created by this act.
