

# 1989 Wisconsin Act 115

(Vetoed in Part)

AN ACT to repeal 166.21 (4) (b); to renumber 59.07 (146) (b) and 166.21 (4) (a); to renumber and amend 59.07 (146) (a) and 166.20 (8); to amend 15.315 (1), 20.465 (3) (jm), 166.20 (1) (b), 166.20 (7) (a) (intro.), 166.20 (7) (a) 1 and 2, 166.20 (7) (b), 166.20 (7) (c) 1 and (d), 166.20 (11) (a) to (d) and 895.46 (1) (e); to repeal and recreate 15.315 (1); and to create 20.465 (3) (d), 59.07 (146) (a) 3 and 4, 59.07 (146) (b) (intro.) and 1, 165.25 (8m), 166.20 (2) (e) and (f), 166.20 (2) (g), 166.20 (4m), 166.20 (5m), 166.20 (7m), 166.20 (11) (dg), 166.20 (11) (dr) and 166.21 (2) (e) and (3) (a) 3 of the statutes, relating to hazardous substances information and planning, membership of the state emergency response commission, providing a penalty and making an appropriation.

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

SECTION 1. 15.315 (1) of the statutes, as affected by 1989 Wisconsin Act 31, section 66, is amended to read:

15.315 (1) STATE EMERGENCY RESPONSE BOARD. There is created a state emergency response board which is attached to the department of military affairs under s. 15.03. The state emergency response board shall consist of one representative of the department of military affairs, division of emergency government, one representative of the subunit of the department of health and social services that administers health-related programs, one representative of the department of transportation, one representative of the department of natural resources, one representative of the department of agriculture, trade and consumer protection, 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 employes of county and municipal government, one representative of agriculture a farm or agricultural organization, one representative of a labor organization and one representative of an environmental organization. The members of the board shall serve at the pleasure of the governor.

SECTION 2. 15.315 (1) of the statutes, as affected by 1989 Wisconsin Acts 31 and .... (this act), is repealed and recreated to read:

15.315 (1) STATE EMERGENCY RESPONSE BOARD. There is created a state emergency response board, which is attached to the department of military affairs under s. 15.03. The state emergency response board shall consist of one representative of the department of military affairs, division of emergency government, one representative of the subunit of the department of health and social services that administers health-related programs, one representative of the department of transportation, one representative of the department of natural resources, one representative of the department of agriculture, trade and consumer protection, 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 employes of county and municipal government, one representative of a farm or agricultural organization, one representative of a labor organization and one representative of an environmental organization. The members of the board shall serve at the pleasure of the governor.

SECTION 2m. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

		<u>1989-90</u>	<u>1990-91</u>
<b>20.465</b>	<b>Military affairs, department of</b>		
(3)	EMERGENCY GOVERNMENT SERVICES		
(d)	State emergency response board; general fund loan	GPR C 517,900	-0-

SECTION 3. 20.465 (3) (d) of the statutes is created to read:

20.465 (3) (d) *State emergency response board; general fund loan.* As a continuing appropriation, the

amounts in the schedule to fund emergency planning grants under s. 166.21 for the portion of costs under s. 166.21 (3) (a) 1 and 2 that were approved by the state

emergency response board in 1988 and 1989 but not paid because funds under par. (jm) were insufficient.

SECTION 4. 20.465 (3) (jm) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

20.465 (3) (jm) *State emergency response board; emergency planning grants.* All moneys received by the state emergency response board from fees assessed under s. 166.20 (7), except moneys appropriated under par. (i), for the payment of grants under s. 166.21. The secretary of administration shall lapse from this appropriation amounts totaling the amount expended under par. (d) at the times and in the instalments determined by the secretary of administration.

SECTION 5. 59.07 (146) (a) of the statutes is renumbered 59.07 (146) (a) (intro.) and amended to read:

59.07 (146) (a) (intro.) ~~Shall create~~ The board shall do all of the following:

1. Create a local emergency planning committee, with members as specified in 42 USC 11001 (c), 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

2. Control all expenditures by any committee ~~appointed by the board~~ created under this paragraph.

SECTION 6. 59.07 (146) (a) 3 and 4 of the statutes are created to read:

59.07 (146) (a) 3. Within the availability of state funds, take all actions necessary to ensure that the committee created under this paragraph properly executes the duties of a local emergency planning committee under 42 USC 11000 to 11050 and under ss. 166.20 and 166.21.

4. At least annually, submit to the state emergency response board a list of the members of the local emergency planning committee appointed by the board under this paragraph, including the agency, organization or profession that each member represents.

SECTION 7. 59.07 (146) (b) of the statutes is renumbered 59.07 (146) (b) 2.

SECTION 8. 59.07 (146) (b) (intro.) and 1 of the statutes are created to read:

59.07 (146) (b) (intro.) The board may do any of the following:

1. Appropriate funds for the operation of the committee created under par. (a).

SECTION 9. 165.25 (8m) of the statutes is created to read:

165.25 (8m) LOCAL EMERGENCY PLANNING COMMITTEES. In subs. (1), (6) and (6m), treat any local emergency planning committee appointed by a county board under s. 59.07 (146) (a) as a department of state government and any member of such a committee as a state official, employee or agent.

SECTION 10. 166.20 (1) (b) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

166.20 (1) (b) "Committee" means a local emergency planning committee created ~~by the board in accordance with 42 USC 11001 (e)~~ under s. 59.07 (146) (a).

SECTION 11. 166.20 (2) (e) and (f) of the statutes are created to read:

166.20 (2) (e) At least annually, submit a report to the governor indicating whether each county has a committee and whether the composition of each committee conforms to 42 USC 11001 (c).

(f) If the composition of a county's committee does not conform to 42 USC 11001 (c), inform the county board of that fact and of the county board's duty, under s. 59.07 (146) (a) 1, to create a committee with members as specified in 42 USC 11001 (c).

SECTION 12. 166.20 (2) (g) of the statutes is created to read:

166.20 (2) (g) Before July 1, 1990, develop a plan under which it will establish regional response teams that meet the training requirements under 29 CFR 1910.120 (q) (6) (iii) to (v) and 40 CFR 311.1.

SECTION 13. 166.20 (4m) of the statutes is created to read:

166.20 (4m) COOPERATION. A state agency or local governmental unit may assist the board or a committee in the performance of its duties and may enter into an agreement with the board or a committee.

SECTION 14. 166.20 (5m) of the statutes is created to read:

166.20 (5m) FURNISHING INFORMATION. If the board or a committee requests, in writing, information relating to the federal act or to this section, a facility shall furnish the information in the manner requested.

SECTION 15. 166.20 (7) (a) (intro.) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

166.20 (7) (a) (intro.) The board shall establish, by rule, the following fees at levels designed to ~~only~~ fund the board's administrative expenses and the grants under s. 166.21 and to repay the amount expended under s. 20.465 (3) (d):

SECTION 16. 166.20 (7) (a) 1 and 2 of the statutes are amended to read:

166.20 (7) (a) 1. An emergency planning notification fee to be paid ~~by~~ when 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~~ when a facility ~~when~~ it submits the emergency and hazardous chemical inventory forms required under sub. (5) (a) 3.

SECTION 17. 166.20 (7) (b) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

166.20 (7) (b) The operator of a facility subject to the requirements of sub. (5) (a) 1 or 3 shall pay the fees under par. (a). The board may establish, by rule, a

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surchARGE to be paid by ~~facilities which fail~~ the operator of a facility if the operator fails to pay the fees under par. (a) in a timely manner. The surcharge under this paragraph shall not exceed 20% of the original fee.

SECTION 18. 166.20 (7) (c) 1 and (d) of the statutes are amended to read:

166.20(7) (c) 1. The fee required under par. (a) 1 is \$800. ~~Facilities~~ For facilities which have made the emergency planning notification required under sub. (5) (a) 1 before May 3, 1988, ~~the operator of a facility~~ shall submit an emergency planning notification fee of \$800 no later than 2 months after May 3, 1988.

(d) ~~Facilities~~ The operator of a facility, including ~~facilities a facility~~ engaged in farming, as defined in s. 102.04 (3), ~~employing is exempt from the fees under~~ par. (a) if the operator of the facility employs fewer than the equivalent of 10 full-time employees ~~are exempt from the fees under par. (a) in this state.~~

SECTION 19. 166.20 (7m) of the statutes is created to read:

166.20 (7m) INSPECTIONS. (a) An authorized inspector of the board or the committee for the county in which a facility is located may enter and inspect any facility or any pertinent record relating to the facility at any reasonable time for the purpose of determining whether the facility is complying with this section and rules promulgated under this section. The board or committee, if requested, shall furnish to the operator of the facility a report setting forth all facts found which relate to compliance with this section and rules promulgated under this section.

(b) The board shall promulgate rules to specify how the board or a committee may authorize inspectors for the purposes of par. (a). The rules shall include requirements for experience or training of individuals authorized to conduct inspections.

SECTION 20. 166.20 (8) of the statutes, as affected by 1989 Wisconsin Act 31, is renumbered 166.20 (8) (a) and amended to read:

166.20 (8) (a) The department of justice, at its own discretion or at the request of the board or the ~~committee or~~ 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 any action commenced under this paragraph, the department of justice may request the assistance of the district attorney for the county in which the violation is alleged to have occurred and the district attorney shall provide the requested assistance.

(b) 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).

SECTION 21. 166.20 (11) (a) to (d) of the statutes are amended to read:

166.20 (11) (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, or any rule promulgated under sub. (5) (a) 1, 2 or 4 or concerning emergency and hazardous chemical inventory form requirements shall forfeit not less than \$100 nor 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, or any rule promulgated under sub. (5) (a) 2 shall:

1. For the first offense, be fined not ~~less than \$1,000~~ less than \$100 nor more than \$25,000 or imprisoned for not more than 2 years or both.

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2. For the 2nd and subsequent offenses, be fined not ~~less than \$2,000~~ less than \$200 nor more than \$50,000 or imprisoned for not more than 2 years or both.

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(c) Any person who violates sub. (5) (a) 5 or 6 or the material safety data sheet requirements of 42 USC 11021, as applied under sub. (5) (a) 3, or any rule promulgated under sub. (5) (a) 5 or 6 or concerning material safety data sheet requirements shall forfeit not less than \$50 nor 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 ~~less than \$1,000~~ less than \$100 nor more than \$20,000 or imprisoned for not more than one year in the county jail or both.

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SECTION 22. 166.20 (11) (dg) of the statutes is created to read:

166.20 (11) (dg) Except as provided in this paragraph, any person who negligently makes a false statement or representation in any document provided by the operator of a facility or required to be maintained by the operator of a facility under the federal act, this section or rules promulgated under this section shall forfeit not less than \$100 nor more than \$25,000. This penalty does not apply to the board, a committee or a member of the board or a committee.

SECTION 23. 166.20 (11) (dr) of the statutes is created to read:

166.20 (11) (dr) Any person who violates any provision of this section or any rule promulgated under this section for which no penalty is provided under pars. (a) to (dg) shall forfeit not more than \$20,000.

SECTION 24. 166.21 (2) (e) and (3) (a) 3 of the statutes are created to read:

166.21 (2) (e) The portion of a previous year's costs that was approved by the board but not paid because of insufficient funds.

(3) (a) 3. The portion of a previous year's costs that was approved by the board but not paid because of insufficient funds.

SECTION 25. 166.21 (4) (a) of the statutes, as affected by 1989 Wisconsin Act 31, is renumbered 166.21 (4).

SECTION 26. 166.21 (4) (b) of the statutes, as affected by 1989 Wisconsin Act 31, is repealed.

SECTION 27. 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 (146) (a) and all members of such a committee, are ~~covered by state officers, employes or agents for the purposes of~~ this subsection.

**SECTION 28. Nonstatutory provisions; fees; rules.**

(1) **SPECIAL EMERGENCY PLANNING NOTIFICATION FEE.** The operator of a facility subject to the requirements of section 166.20 (5) (a) 1 of the statutes shall pay a special emergency planning notification fee of \$800 to the state emergency response board if all of the following apply:

(a) The operator employs the equivalent of 10 or more full-time employes in this state.

(b) Fewer than the equivalent of 10 full-time employes work at the facility.

(c) The operator has not paid an emergency planning notification fee under section 166.20 (7) (a) 1 of the statutes.

(2) **ONE-TIME 1989 INVENTORY FORM FEE.** (a) The operator of a facility subject to the requirements of section 166.20 (5) (a) 3 of the statutes shall pay a one-time 1989 inventory form fee to the state emergency response board if all of the following apply:

1. The operator employs the equivalent of 10 or more full-time employes in this state.

2. Fewer than the equivalent of 10 full-time employes work at the facility.

3. The operator has not paid an inventory form fee under section 166.20 (7) (a) 2 of the statutes for the facility for 1989.

(b) The fee required under paragraph (a) is:

1. For facilities submitting inventory forms under section 166.20 (5) (a) 3 of the statutes in 1989 listing one to 100 hazardous chemicals, \$100.

2. For facilities submitting inventory forms under section 166.20 (5) (a) 3 of the statutes in 1989 listing 101 to 500 hazardous chemicals, \$150.

3. For facilities submitting inventory forms under section 166.20 (5) (a) 3 of the statutes in 1989 listing more than 500 hazardous chemicals, \$300.

(3) **DUE DATE.** All fees required to be paid under this SECTION shall be paid on or before the 60th day after the effective date of this subsection.

(4) **SURCHARGE.** Any surcharge established under section 166.20 (7) (b) of the statutes applies to the payment of fees under this SECTION.

(5) **CREDITING.** All moneys received under this SECTION shall be credited to the appropriations under section 20.465 (3) (i) and (jm) of the statutes.

(6) **EXEMPTION FROM STATUTORY FEES.** Notwithstanding section 166.20 (7) of the statutes:

(a) An operator who pays the fee under subsection (1) for a facility is not required to pay the fee under section 166.20 (7) (a) 1 of the statutes for that facility.

(b) An operator who pays the fee under subsection (2) for a facility is not required to pay the fee under section 166.20 (7) (a) 2 of the statutes for inventory from submissions required for that facility in 1989 under section 166.20 (5) (a) 3 of the statutes.

(7) **RULES.** The state emergency response board shall submit in proposed form the rules required under section 166.20 (7) (a) and (7m) (b) of the statutes, as affected by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subsection.

(8) **AUTHORIZED INSPECTORS.** Notwithstanding section 166.20 (7m) of the statutes, as created by this act, the state emergency response board may designate individuals to conduct investigations under section 166.20 (7m) (a) of the statutes, as created by this act, during the period before the effective date of the rules promulgated under section 166.20 (7m) (b) of the statutes, as created by this act.

**SECTION 29. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The repeal and recreation of section 15.315 (1) of the statutes takes effect on January 1, 1990.