

CHAPTER 166

EMERGENCY GOVERNMENT

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166.01 Declaration of policy. To prepare the state and its subdivisions to cope with emergencies resulting from enemy action and natural or man-made disasters, it is declared to be necessary to establish an organization for emergency government, conferring upon the governor and others specified the powers and duties provided by this chapter.

History: 1979 c. 361 s. 52.

166.02 Definitions. In this chapter, unless the context clearly indicates otherwise:

(1g) "Adjutant general" means the adjutant general of the department of military affairs.

(1m) "Administrator" means the administrator of the division.

(2) "Civil defense" means all measures undertaken by or on behalf of the state and its subdivisions to prepare for and minimize the effect of enemy action upon the civilian population.

(3) "Division" means the division of emergency government.

(4) "Emergency government" includes "civil defense" and means all measures undertaken by or on behalf of the state and its subdivisions:

(a) To prepare for and minimize the effect of enemy action and natural or man-made disaster upon the civilian population.

(b) To effectuate emergency repairs to, or the emergency restoration of, vital public utilities and facilities destroyed or damaged by such action or disaster.

(5) "Enemy action" means hostile action by a foreign power which threatens the security of this state or a portion thereof.

History: 1979 c. 361 ss. 54, 73; 1989 a. 31.

166.03 Emergency government. (1) POWERS AND DUTIES OF THE GOVERNOR. (a) The governor shall:

1. Review orders establishing or altering emergency government areas.

2. Review state emergency government plans and modifications thereof.

3. Employ the division of emergency government during a state of emergency proclaimed by him or her, issue orders and delegate such authority as is deemed necessary to the administrator.

4. Determine responsibilities of state departments and independent agencies in respect to emergency government and by order direct such departments and agencies in utilizing personnel, facilities, supplies and equipment before and during a state of emergency.

(b) The governor may:

1. Proclaim a state of emergency for the state or any portion thereof if he or she determines that an emergency

resulting from enemy action or natural or man-made disaster exists. The duration of such state of emergency shall not exceed 60 days as to emergencies resulting from enemy action or 30 days as to emergencies resulting from natural or man-made disaster, unless either is extended by joint resolution of the legislature. A copy of the proclamation shall be filed with the secretary of state. The proclamation may be revoked at the discretion of either the governor by written order or the legislature by joint resolution.

2. On behalf of the state, enter into mutual aid agreements concerning emergency government with other states.

3. Accept from any source gifts and grants including services for emergency government purposes and may authorize state, county, town and municipal officers to receive such gifts and grants. When grants require county, town or municipal participation, the state may transfer title to equipment acquired through such agreement to participating counties, towns and municipalities.

4. During a state of emergency, declare priority of emergency government contracts over other contracts, allocate materials and facilities in his or her discretion, and take, use and destroy private property for emergency government purposes. Such taking, use or destruction shall be in the name of the state. Records shall be kept of such action and such records shall be evidence of a claim against the state. Any such claim shall be referred to the claims board under s. 16.007.

5. During a state of emergency, issue such orders as he or she deems necessary for the security of persons and property.

6. During a state of emergency, contract on behalf of the state with any person to provide equipment and services on a cost basis to be used in disaster relief.

(2) **POWERS AND DUTIES OF ADJUTANT GENERAL.** (a) The adjutant general shall:

1. Subject to approval by the governor, develop and promulgate a state plan of emergency government for the security of persons and property which shall be mandatory during a state of emergency.

2. Prescribe and carry out state-wide training programs and exercises to develop emergency government proficiency, disseminate information including warnings of enemy action, serve as the principal assistant to the governor in the direction of emergency government activities and coordinate emergency government programs between counties.

3. Furnish guidance and develop and promulgate standards for emergency government programs for counties, towns and municipalities, and prescribe nomenclature for all levels of emergency government.

4. Withhold or recover grants under sub. (13).

5. Provide assistance to the Wisconsin wing of the civil air patrol from the appropriation under s. 20.465 (3) (q) for the purpose of enabling the patrol to perform its assigned mis-

sions and duties as prescribed by U.S. air force regulations. Expenses eligible for assistance are aircraft acquisition and maintenance, communications equipment acquisition and maintenance and office staffing and operational expenses. The civil air patrol shall submit vouchers for expenses eligible for assistance to the division.

(b) The adjutant general may:

1. Divide the state into emergency government areas composed of whole counties by general or special written orders subject to approval by the governor, and modify the boundaries thereof as changed conditions warrant. Such areas shall be classified and designated in accordance with standards promulgated under the federal civil defense act of 1950, as amended.

2. Appoint a head of emergency government for each area established in accordance with subd. 1 under the classified service on either a part-time or full-time basis, or may request the governor to designate any state officer or employe as acting area head on a part-time basis.

3. Designate and post highways as emergency government routes closed to all but authorized vehicles when required for training programs and exercises.

4. Prescribe traffic routes and control traffic during a state of emergency.

5. Organize and train state mobile support units to aid any area during a state of emergency. Such units may participate in training programs and exercises both within and outside the state.

6. Request the department of health and social services to inspect or provide for the inspection of shipments of radioactive waste, obtain and analyze data concerning the radiation level of shipments of radioactive waste and issue reports concerning these shipments and radiation levels. The adjutant general may assess and collect and receive contributions for any costs incurred under this subdivision from any person who produced the radioactive waste which is the subject of the activity for which the costs are incurred. In this subdivision, "radioactive waste" has the meaning given in s. 144.833 (1) (b).

NOTE: Subd. 6 is shown as repealed and recreated by 1989 Wis. Act 31, s. 2445b, eff. 7-1-91. Prior to 7-1-91, it reads:

"6. Request the department of health and social services to inspect or provide for the inspection of shipments of radioactive waste, obtain and analyze data concerning the radiation level of shipments of radioactive waste and issue reports concerning these shipments and radiation levels. The adjutant general may assess and collect and receive contributions for any costs incurred under this subdivision from any person who produced the radioactive waste which is the subject of the activity for which the costs are incurred. In this subdivision, "radioactive waste" includes high-level radioactive waste, as defined under s. 36.50 (1) (c) and transuranic waste, as defined under s. 36.50 (1) (d)."

7. Assess and collect and receive contributions for any costs incurred by state agencies to establish and maintain radiological emergency response plans related to nuclear generating facilities.

8. Make payments from the appropriation under s. 20.465 (3) (e) to reimburse the federal government for the amounts advanced to pay this state's share of grants to individuals and to provide a share of any required state share of contributions to local governments as defined in 42 USC 5122 (6) for major disaster recovery assistance. Payment of this state's share of any contribution to a local government under this subdivision is contingent upon copayment of that share by the local government, but not to exceed 12.5% of the total eligible cost of assistance.

(3) **POWERS AND DUTIES OF AREA HEADS.** Area heads of emergency government may exercise such powers as are delegated and shall perform such duties as are assigned to them by the adjutant general.

(4) **POWERS AND DUTIES OF COUNTIES AND MUNICIPALITIES.**

(a) The governing body of each county, town and municipality shall adopt an effective program of emergency government consistent with the state plan of emergency government and, except at the county level in counties having a county executive, shall appoint a head of emergency government services. Each such governing body may appropriate funds and levy taxes for this program.

(b) In counties having a county executive under s. 59.031, the county board shall designate the county executive or confirm his or her appointee as county head of emergency government services.

(c) Each county board shall designate a committee of the board as a county emergency government committee whose chairperson shall be a member of the committee designated by the chairperson of the county board. The committee, in counties having a county executive under s. 59.031, shall retain policy-making and rule-making powers in the establishment and development of county emergency government plans and programs.

(d) During the continuance of a state of emergency proclaimed by the governor the county board of each county situated within the area to which the governor's proclamation applies may employ the county emergency government organization and the facilities and other resources of the organization to cope with the problems of the emergency, and the governing body of each municipality and town situated within the area shall have similar authority with respect to municipal emergency government organizations, facilities and resources. Nothing in this chapter prohibits counties and municipalities from employing their emergency government organizations, facilities and resources to cope with the problems of local public emergencies except where restrictions are imposed by federal regulations on property donated by the federal government.

(5) **POWERS AND DUTIES OF HEAD OF EMERGENCY GOVERNMENT SERVICES.**

(a) The head of emergency government services in each county, town and municipality shall for his or her respective county, town or municipality, develop and promulgate emergency government plans consistent with state plans, direct the emergency government program and perform such other duties related to emergency government as are required by the governing body and the emergency government committee of the governing body when applicable.

(b) The head of emergency government services in each county shall coordinate and assist in developing town and municipal emergency government plans within the county, integrate such plans with the county plan, advise the department of all emergency government planning in the county and submit to the adjutant general such reports as he or she requires, direct and coordinate emergency government activities throughout the county during a state of emergency, and direct countywide emergency government training programs and exercises.

(c) The head of emergency government services in each town and municipality shall direct local emergency government training programs and exercises, direct participation in emergency government programs and exercises ordered by the adjutant general and the county head of emergency government services, and advise the county head of emergency government services on local emergency government programs and submit to him or her such reports as he or she requires.

(d) During the continuance of a state of emergency proclaimed by the governor, the head of emergency government services in each county, town and municipality, on behalf of

his or her respective county, town or municipality, may contract with any person to provide equipment and services on a cost basis to be used in disaster relief.

(6) **EMERGENCY USE OF VEHICLES.** In responding to an official request for help during any state of emergency, any person may operate any vehicle without regard for motor vehicle registration laws and without being subject to arrest under s. 341.04.

(7) **COOPERATION.** (a) Counties, towns and municipalities may cooperate under s. 66.30 to furnish services, combine offices and finance emergency government services.

(b) Counties, towns and municipalities may contract for emergency government services with political subdivisions, emergency government units and civil defense units of this state, and upon prior approval of the adjutant general, with such entities in bordering states. A copy of each such agreement shall be filed with the adjutant general within 10 days after execution thereof.

(c) The state and its departments and independent agencies and each county, town and municipality shall furnish whatever services, equipment, supplies and personnel are required of them under this chapter.

(8) **PERSONNEL.** (a) No emergency government organization established under this section shall participate in any form of political activity or be employed directly or indirectly for any political activity.

(b) No emergency government organization established under this section shall be employed to interfere with the orderly process of a labor dispute.

(c) No person shall be employed or associated in any capacity in any emergency government organization under this section who advocates a change by force or violence in the constitutional form of government of the United States or this state or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(d) Employees of municipal and county emergency government units are employees of the municipality or county to which the unit is attached for purposes of worker's compensation benefits. Employees of the area and state emergency government units are employees of the state for purposes of worker's compensation benefits. Volunteer emergency government workers are employees of the emergency government unit with whom duly registered in writing for purposes of worker's compensation benefits. An emergency government employe or volunteer who engages in emergency government activities upon order of any echelon in the emergency government organization other than that which carries his or her worker's compensation coverage shall be eligible for the same benefits as though employed by the governmental unit employing him or her. Any employment which is part of an emergency government program including but not restricted because of enumeration, test runs and other activities which have a training objective as well as emergency government activities during an emergency proclaimed in accordance with this chapter and which grows out of, and is incidental to, such emergency government activity is covered employment. Members of an emergency government unit who are not acting as employees of a private employer during emergency government activities are employees of the emergency government unit for which acting. If no pay agreement exists or if the contract pay is less, pay for worker's compensation purposes shall be computed in accordance with s. 102.11.

(e) Emergency government employes as defined in par. (d) shall be indemnified by their sponsor against any tort liability to third persons incurred in the performance of emergency government activities while acting in good faith and in a

reasonable manner. Emergency government activities constitute a governmental function.

(f) If the total liability for worker's compensation benefits under par. (d), indemnification under par. (e) and loss from destruction of equipment under sub. (9), incurred in any calendar year exceeds \$1 per capita of the sponsor's population, the state shall reimburse the sponsor for the excess. Payment shall be made from the appropriation in s. 20.465 (3) (a) on certificate of the adjutant general.

(g) Emergency government employes as such shall receive no pay unless specific agreement for pay is made.

(9) **BEARING OF LOSSES.** Any loss arising from the damage to or destruction of government-owned equipment utilized in any authorized emergency government activity shall be borne by the owner thereof.

(10) **EXEMPTION FROM LIABILITY.** No person who provides equipment or services under the direction of the governor, the adjutant general or the head of emergency government services in any county, town or municipality during a state of emergency declared by the governor is liable for the death of or injury to any person or damage to any property caused by his or her actions, except where the trier of fact finds that the person acted intentionally or with gross negligence. This subsection does not affect the right of any person to receive benefits to which he or she would otherwise be entitled under the worker's compensation law or under any pension law, nor does it affect entitlement to any other benefits or compensation authorized by state or federal law.

(11) **POWERS OF PEACE OFFICERS.** During any state of emergency proclaimed by the governor or during any training program or exercises authorized by the adjutant general, any peace officer or traffic officer of the state, or of a county, city, village or town, when legally engaged in traffic control, escort duty or protective service, may carry out such functions at any point within the state but shall be subject to the direction of the adjutant general through the sheriff of the county in which an assigned function is performed.

(12) **RED CROSS NOT AFFECTED.** Nothing contained in this section shall limit or in any way affect the responsibility of the American National Red Cross as authorized by the congress of the United States.

(13) **AUTHORITY TO WITHHOLD GRANTS.** If the adjutant general finds that any political subdivision of the state has not complied with the requirement of this section that it establish and maintain an operating emergency government organization, he or she may refuse to approve grants of funds or items of equipment to such political subdivision until it complies. If such political subdivision fails to use funds or items of equipment granted to it through the adjutant general in accordance with the agreement under which the grant was made, the adjutant general may refuse to make any additional grants to such political subdivision until it has complied with the conditions of the prior grant, and he or she may start recovery proceedings on the funds and items of equipment which have not been used in accordance with the conditions of the grant.

(14) **PENALTIES.** Whoever intentionally fails to comply with the directives of emergency government authorities promulgated under this section during a state of emergency or during any training program or exercises may be fined not more than \$200 or imprisoned not more than 90 days or both.

History: 1971 c. 211 s. 126; 1975 c. 147 s. 54; 1975 c. 199; 1977 c. 1; 1977 c. 397; 1979 c. 361 ss. 51, 55, 112, 113; 1981 c. 20, 211; 1983 a. 27; 1985 a. 29, 31; 1987 a. 27; 1989 a. 31.

A disaster training exercise is covered employment for workmen's compensation purposes under 22.16 (9) (d), 1977 stats [now 166.03 (8) (d)], a person remaining the employe of his or her initial emergency government unit for the duration of an emergency government activity. Section 22.16 (9) (f), 1977 stats [now 166.03 (8) (f)] also construed. 62 Atty. Gen. 217.

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89-90 Wis. Stats. 2838

166.04 State traffic patrol and conservation warden duties during civil disorder. Without proclaiming a state of emergency, the governor may, in writing filed with the secretary of state, determine that there exists a condition of civil disorder or a threat to the safety of persons on state property or damage or destruction to state property. Upon such filing, he or she may call out the state traffic patrol or the conservation warden force or members thereof for use in connection with such threat to such life or property. For the duration of such threat, as determined by the governor, such officers shall have the powers of a peace officer as set forth in s. 59.24, except that such officers shall not be used in or take part in any dispute or controversy between employer or employe concerning wages, hours, labor or working conditions.

History: 1979 c. 361 ss. 56, 112; Stats. 1979 s. 166.04.

State traffic patrol officers may act as peace officers during a prison riot or other disturbance even when this occurs during a strike of prison guards; they may not, however, perform other duties of guards. 68 Atty. Gen. 104.

166.05 Emergency seat of state government. (1) DESIGNATION OF EMERGENCY TEMPORARY LOCATION. Whenever, during a state of emergency it becomes imprudent, inexpedient or impossible to conduct the affairs of state government at the state capital, the governor shall, as often as the exigencies of the situation require, by proclamation designate an emergency temporary location for the seat of government at such place within or without this state as he or she deems advisable, and shall take such action and issue such orders as are necessary for an orderly transition of the affairs of state government to such emergency temporary location. If practicable, the emergency temporary location so designated by the governor shall conform to that provided for in the current emergency government plan authorized by s. 166.03. Such emergency temporary location shall remain as the seat of government until the governor establishes a new location under this section, or until the emergency is ended under s. 166.03 and the seat of government is returned to its normal location.

(2) EXERCISE OF GOVERNMENTAL AUTHORITY. While the seat of government remains at such temporary location all official acts required by law to be performed at the seat of government by any officer, independent agency, department or authority of this state, including the convening and meeting of the legislature in regular or special session, shall be as valid and binding when performed at such emergency temporary location as if performed at the normal location.

History: 1979 c. 361 ss. 56, 112, 113; Stats. 1979 s. 166.05.

166.06 Emergency temporary locations of government for counties, towns and municipalities. (1) DESIGNATION OF EMERGENCY TEMPORARY LOCATIONS. Whenever during a state of emergency it becomes imprudent, inexpedient or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each county, town and municipality of this state may meet at any place within or without the territorial limits of such political subdivision on the call of the presiding officer or his or her successor, and shall proceed to establish and designate by ordinance, resolution or other manner, alternate or substitute sites or places as the emergency temporary locations of government where all, or any part, of the public business may be transacted and conducted during the emergency situation. Such alternate or substitute site or places may be within or without the territorial limits of such county, town or municipality and may be within or without those of the state. If practicable, they shall be the sites or places designated as the emergency temporary locations of government in the current emergency government plan.

(2) EXERCISE OF GOVERNMENTAL AUTHORITY. While the public business is being conducted at an emergency temporary location, the governing body and other officers of a county, town or municipality of this state shall have, possess and exercise, at such location, all of the executive, legislative, administrative and judicial powers and functions conferred upon such body and officers under state law. Such powers and functions, except judicial, may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto. All acts of such body and officers shall be as valid and binding as if performed within the territorial limits of their county, town or municipality.

(3) PRIORITY OF LEGISLATION. This section shall control notwithstanding any statutory, charter or ordinance provision to the contrary or in conflict herewith.

History: 1979 c. 361 ss. 56, 112; Stats. 1979 s. 166.06.

166.07 Succession to local offices. The governing body of any county, town or municipality may enact such ordinances and resolutions as are necessary to provide for the continuity of government in the event of and throughout the duration of a state of emergency resulting from enemy action. Such ordinances and resolutions shall provide a method by which temporary emergency appointments to public office are made, except as limited by express constitutional provisions and shall define the scope of the powers and duties which may be exercised, and shall provide for termination of the appointment so made. This section shall control notwithstanding any statutory provision to the contrary or in conflict herewith.

History: 1979 c. 361 s. 56; Stats. 1979 s. 166.07.

166.08 Succession to office. (1) DECLARATION OF POLICY. Because of the possibility of enemy attack upon the United States, it is determined and declared to be necessary to assure the continuity and effective operation of the government of this state and of its political subdivisions in the event of such attack, by providing for additional persons who can temporarily exercise the powers and discharge the duties of state and local offices.

(2) DEFINITIONS. As used in this section unless the context clearly requires otherwise:

(a) "Attack" means any action taken by an enemy of the United States causing or threatening to cause, substantial damage or injury to persons or property in the state in any manner.

(b) "Emergency interim successor" means a person designated under this section, if the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as provided by law or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(c) "Office" includes all state and local offices, the powers and duties of which are defined by law, except the office of governor, and except those in the legislature and the judiciary. An "officer" is a person who holds an office.

(d) "Political subdivision" includes counties, towns, municipalities, special districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

(e) "Unavailable" means that during a state of emergency resulting from enemy action, either a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office and his or her duly authorized deputy

are absent or unable to exercise the powers and discharge the duties of the office.

(3) EMERGENCY INTERIM SUCCESSORS TO OFFICE OF GOVERNOR. If the governor is unavailable, and if the lieutenant governor and the secretary of state are unavailable, the attorney general, state treasurer, speaker of the assembly, and the president of the senate shall in the order named if the preceding named officers are unavailable, exercise the powers and discharge the duties of the office of governor until a new governor is elected and qualified, or until a preceding named officer becomes available; but no emergency interim successor to the aforementioned offices may serve as governor.

(4) EMERGENCY INTERIM SUCCESSORS FOR STATE OFFICERS. All state officers, subject to such regulations as the governor (or other official authorized under the constitution or this section to exercise the powers and discharge the duties of the office of governor) may issue, shall, in addition to any deputy authorized to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of such emergency interim successors so that there will be not less than 3 nor more than 7 such deputies or emergency interim successors or any combination thereof, at any time. If any state officer is unavailable following an attack, and if his or her deputy, if any, is also unavailable, the powers of his or her office shall be exercised and the duties of his or her office shall be discharged by his or her designated emergency interim successors in the order specified. Such emergency interim successors shall exercise said powers and discharge said duties only until such time as the governor under the constitution or authority other than this section or other official authorized under the constitution or this section to exercise the powers and discharge the duties of the office of governor may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed, or elected and qualified as provided by law; or an officer or his or her deputy or a preceding named emergency interim successor becomes available to exercise, or resume the exercise of, the powers and discharge the duties of his or her office.

(5) ENABLING AUTHORITY FOR EMERGENCY INTERIM SUCCESSORS FOR LOCAL OFFICES. With respect to local offices for which the governing bodies of political subdivisions may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such governing bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with this section.

(6) EMERGENCY INTERIM SUCCESSORS FOR LOCAL OFFICERS. This section applies to officers of all political subdivisions not included in sub. (5). Such officers, subject to such regulations as the executive head of the political subdivision issues, shall designate by title, if feasible, or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of persons so that there will be not less than 3 nor more than 7 deputies or emergency interim successors or any combination thereof at any time. If any officer of any political subdivision or his or her deputy provided for pursuant to law is unavailable, the powers of the office shall be exercised and duties shall be discharged by his or her designated emergency interim suc-

cessors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist is filled in accordance with the constitution or statutes or until the officer or his or her deputy or a preceding emergency interim successor again becomes available to exercise the powers and discharge the duties of his or her office.

(7) STATUS AND QUALIFICATIONS OF DESIGNEES. No person shall be designated or serve as an emergency interim successor unless he or she is eligible under the constitution and statutes to hold the office to which powers and duties he or she is designated to succeed, but no constitutional or statutory provision prohibiting local or state officials from holding another office shall be applicable to an emergency interim successor.

(8) FORMALITIES OF TAKING OFFICE. Emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. No person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he or she succeeds, shall be required to comply with any other provision of law relative to taking office.

(9) PERIOD IN WHICH AUTHORITY MAY BE EXERCISED. Officials authorized to act as governor pursuant to this section and emergency interim successors are empowered to exercise the powers and discharge the duties of an office as herein authorized only during the continuance of an emergency resulting from enemy action in the form of an attack. The legislature, by joint resolution, may at any time terminate the authority of said emergency interim successors to exercise the powers and discharge the duties of office as herein provided.

(10) REMOVAL OF DESIGNEES. Until such time as the persons designated as emergency interim successors are authorized to exercise the powers and discharge the duties of an office in accordance with this section, said persons shall serve in their designated capacities at the pleasure of the designating authority.

(11) DISPUTES. Any dispute concerning a question of fact arising under this section with respect to an office in the executive branch of the state government, except a dispute of fact relative to the office of governor, shall be adjudicated by the governor or other official authorized under the constitution or this section to exercise the powers and discharge the duties of the office of governor and his or her decision shall be final.

History: 1979 c. 34; 1979 c. 361 ss. 56, 112; Stats. 1979 s. 166.08; 1983 a 189.

166.09 Public shelters; immunity from civil liability. (1) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the state or any of its political subdivisions a license or privilege, or otherwise permits the state or any of its political subdivisions to inspect, designate and use the whole or any part thereof for the purpose of sheltering persons during an actual, impending, mock or practice attack shall, together with his or her successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any person on or about such real estate or premises under such license, privilege or permission or for loss or damage to the property of such person, if the owner or controller has complied with sub. (2).

(2) Any person owning or controlling real estate or other premises who gratuitously grants the use thereof for the purposes stated in sub. (1) shall make known to the licensee any hidden dangers or safety hazards which are known to the owner or occupant of said real estate or premises which might

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possibly result in death or injury or loss of property to any person making use thereof.

History: 1979 c. 361 ss. 56, 112; Stats. 1979 s. 166.09.

166.10 Preservation of essential public records. The public records and forms board shall establish a system for the preservation of essential state public records necessary for the continuity of governmental functions in the event of enemy action or natural or man-made disasters. The board shall:

(1) Determine what records are essential for operation during a state of emergency and thereafter through consultation with all state departments and independent agencies and the administrator, establish the manner in which such records shall be preserved, and provide for their preservation.

(2) Require every state department and independent agency to establish and maintain a preservation program for essential state public records.

(3) Provide for security storage of essential state records.

(4) Furnish state departments and independent agencies with copies of the final plan for preservation of essential public records.

(5) Advise all political subdivisions of this state on preservation of essential public records.

History: 1979 c. 361 s. 57; Stats. 1979 s. 166.10; 1981 c. 350 s. 13; 1985 a. 180 ss. 24, 30m; 1987 a. 147 s. 25.

166.15 Radioactive waste emergencies. (1) DEFINITIONS. In this section:

(a) "Association" means a relationship in which one person controls, is controlled by or is under common control with another person.

(b) "Company" means any partnership, joint-stock company, business trust or organized group of persons, whether incorporated or not, and any person acting as a receiver, trustee or other liquidator of a partnership, joint-stock company, business trust or organized group of persons. "Company" does not include a state or local governmental body.

(c) "Control" means to possess, directly or indirectly, the power to direct or cause the direction of the management and policies of a company, whether that power is exercised through one or more intermediary companies, or alone, or in conjunction with, or by an agreement with, any other company, and whether that power is established through a majority or minority ownership or voting of securities, common directors, officers, stockholders, voting trusts, holding trusts, affiliated companies, contract or by any other direct or indirect means. "Control" includes owning, holding or controlling, directly or indirectly, at least 5% of the voting power in the election of directors of a company. "Control" has the same meaning as the terms "controlled by" and "under common control with".

(d) "Emergency provider" means any person who provides emergency care or facilities and includes emergency government.

(e) "Harm" means:

1. Damage to property.
2. Personal physical injury, illness or death, including mental anguish or emotional harm attendant to the personal physical injury, illness or death.
4. Economic loss.

5. Environmental pollution, as defined in s. 144.01 (3).

6. Expenses incurred by an emergency provider in preparing for and responding to a nuclear incident which are not reimbursed under s. 144.76 (7) or 166.03 (1) (b) 2 or 3 or (2) (b) 7.

(f) "Nuclear incident" means any sudden or nonsudden release of radiation, as defined under s. 140.52 (3g), from radioactive waste being stored or disposed of in a waste

repository or transported. "Nuclear incident" does not include any release of radiation from radioactive waste being transported under routine operations.

(g) "Person" means any individual or company. "Person" includes the federal government.

(h) "Radioactive waste" means radioactive waste, as defined in s. 144.833 (1) (b), and radioactive defense waste.

NOTE: Par. (h) is shown as repealed and recreated by 1989 Wis. Act 31, eff. 7-1-91. Prior to 7-1-91, it reads:

"(h) "Radioactive waste" means high-level radioactive waste, as defined in s. 36.50 (1) (c), transuranic waste, as defined in s. 36.50 (1) (d), and radioactive defense waste."

(i) "Responsible party" means any person described under sub. (3) (a) 1. a to d.

(j) "Routine operations" means the operation of transportation equipment in a manner that is not subject to the requirements for immediate notice of incidents under 49 USC 1801 to 1811 or notice of discharge under s. 144.76 (2).

(k) "Waste repository" means any system used or intended to be used to dispose of or store radioactive waste under 42 USC 10101 to 10226, including but not limited to a permanent disposal system, interim storage system, monitored retrievable storage system, defense waste storage system, away-from-reactor storage facility and a test and evaluation facility.

(2) LIABILITY. All responsible parties are strictly liable, jointly and severally, for any harm caused by a nuclear incident.

(3) REBUTTABLE PRESUMPTION. (a) In any action brought under sub. (2) to recover damages for harm claimed to be caused by a nuclear incident, it is presumed that the nuclear incident was a cause of the harm if the plaintiff produces evidence to the court sufficient to enable a reasonable person to find all of the following:

1. The defendant is any of the following:

a. A person who is in any way responsible for the design, construction, operation or monitoring of the waste repository or transportation equipment from which the radiation was released in the nuclear incident.

b. A person who owns the waste repository or transportation equipment from which the radiation was released in the nuclear incident.

c. A person who produces, possesses, controls or owns radioactive waste stored or disposed of in the waste repository or transportation equipment from which the radiation was released in the nuclear incident.

d. A person who has an association with any person described under subd. 1. a to c.

2. The harm could reasonably have resulted from the nuclear incident.

(b) A defendant in an action brought under sub. (2) may rebut the presumption under par. (a) by proving that:

1. The defendant is not a responsible party; or

2. The harm claimed to be caused by a nuclear incident could not have reasonably resulted from the nuclear incident.

(4) COURT AWARD. In issuing any final order in any action brought under this section in which the plaintiff prevails, the court shall award to the plaintiff the cost of the suit, including reasonable attorney and expert witness fees, and the damages sustained by the plaintiff.

(5) CONSTRUCTION. This section may not be deemed to have any effect upon the liability of any person for any harm caused by any incident which is not a nuclear incident.

History: 1985 a. 29; 1989 a. 31; 1989 a. 56 s. 259.

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

(a) "Board" means the state emergency response board.

(b) "Committee" means a local emergency planning committee created under s. 59.07 (146) (a).

(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 facility, prepared as a component of a local emergency response plan under sub. (5) (a) 1 and under 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 BOARD. The board shall:

(a) Carry out all requirements of a state emergency response 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.

(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).

(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.

(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 board.

(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 board 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.

(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.

(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 board 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 board 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.

(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.

(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 board shall establish, by rule, the following fees at levels designed to 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):

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

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

(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 surcharge to be paid by 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.

(c) Beginning on May 3, 1988, and continuing until the effective date of rules promulgated under par. (a):

1. The fee required under par. (a) 1 is \$800. 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.

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

(e) All moneys received under this subsection shall be credited to the appropriations under s. 20.465 (3) (i) and (jm).

(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.

(8) ENFORCEMENT. (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).

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

2. The board 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 board 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 board 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 board 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 board 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 board under this subsection if fewer than 60 days have elapsed since the plaintiff gave notice of the action to the board.

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

(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, 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 \$100 nor more than \$25,000 or imprisoned for not more than 2 years or both.

2. For the 2nd and subsequent offenses, be fined not less than \$200 nor 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 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 \$100 nor more than \$20,000 or imprisoned for not more than one year in the county jail or both.

(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.

(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.

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

History: 1987 a. 342; 1989 a. 31, 115, 359.

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 board for an emergency planning grant. Applications shall be made in the manner specified by the board.

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

(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.

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

(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 board 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).

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

(b) The board 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 board shall deny that portion of a grant calculated under par. (a) 2 if the board 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 board 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 June 1, 1989.

(4) PAYMENT OF GRANTS. Annually, the board shall review all applications received under this section and make grants to committees from the appropriation under s. 20.465 (3) (jm). If insufficient funds are available to pay all approved grants, the board 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.

(5) PAYMENT IN ADVANCE. (a) The board 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 board determines that the necessary funds are available and that the advance payment will not result in insufficient funds to pay other grants.

(b) The board 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 board 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 board 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 board 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.

History: 1987 a. 342; 1989 a. 31, 115.

166.22 Local agency response and reimbursement. (1) In this section:

(a) "Discharge" has the meaning given in s. 144.76 (1) (a).

(b) "Hazardous substance" has the meaning given in s. 144.01 (4m).

(c) "Local agency" means an agency of a county, city, village or town, including a municipal police or fire department, a municipal health organization, a county office of emergency government, a county sheriff, an emergency medical service or a public works department.

(2) A person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to protect public health and safety and prevent damage to property.

(3) If action required under sub. (2) is not being adequately taken or the identity of the person responsible for a discharge of a hazardous substance is unknown and the discharge threatens public health or safety or damage to property, a

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local agency may take any emergency action that is consistent with the contingency plan for the undertaking of emergency actions in response to the discharge of hazardous substances established by the department of natural resources under s. 144.76 (5) and that it considers appropriate under the circumstances.

(4) A person who possessed or controlled a hazardous substance that was discharged or who caused the discharge of a hazardous substance shall, as provided under sub. (5), reimburse a local agency for actual, reasonable and necessary expenses incurred under sub. (3).

(5) (a) The county board may designate a county employee or body as the reviewing entity under this subsection. If the county board does not make a designation, the local emergency planning committee is the reviewing entity.

(am) A local agency seeking reimbursement under sub. (4) shall submit a claim stating its expenses to the reviewing entity for the county in which the discharge occurred.

(b) The reviewing entity shall review claims submitted under par. (am) and determine the amount of reasonable and

necessary expenses incurred. The reviewing entity shall provide a person who is liable for reimbursement under sub. (4) with a notice of the amount of expenses it has determined to be reasonable and necessary that arise from one discharge and are incurred by all local agencies from which the reviewing entity receives a claim.

(c) If a person receiving a notice under par. (b) objects to the amount of expenses in the notice, the person may ask the reviewing entity to review its determination. The reviewing entity may modify the determination and shall notify the person of the result of its review.

(d) A person liable for reimbursement under sub. (4) shall pay the reimbursement directly to each local agency.

(6) A county may enact an ordinance in conformity with this section that governs the administration of claims under sub. (5).

History: 1989 a 256