



WISCONSIN LEGISLATIVE COUNCIL

DISASTER PREPAREDNESS PLANNING

Legislative Council Conference Room
Madison, Wisconsin

January 10, 2007
10:00 a.m. – 3:00 p.m.

[The following is a summary of the January 10, 2007 meeting of the Special Committee on Disaster Preparedness Planning. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Ballweg called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Joan Ballweg, Chair; Reps. Chuck Benedict, Doc Hines, and Samantha Kerkman; and Public Members Dan Alexander, Bill Bazan, Vicki Bier, Robert Carlson, Pete Eide, Kathy Munsey, Leonard Orlando, and Diana Tatili.

COMMITTEE MEMBERS EXCUSED: Public Members William Dowling, Kurt Eggebrecht, Curtis Haugen, and Robert Ritger.

COUNCIL STAFF PRESENT: Pam Shannon and Richard Sweet, Senior Staff Attorneys; and Jessica Karls, Staff Attorney.

Approval of the Minutes of the December 13, 2006 Meeting

Representative Kerkman moved, seconded by Mr. Bazan, to approve the December 13, 2006 minutes. The minutes were approved by voice vote.

Discussion of Draft Legislation

- ***WLC: 0049/1, relating to declarations of emergencies by counties***

Mr. Sweet stated that the bill draft would amend state law to explicitly include counties as an entity that can declare a state of emergency and explained the sections of the bill draft. He explained that the county board of supervisors would have to convene to declare an emergency, except where the emergency would not allow the board to convene.

Representative Hines moved, seconded by Representative Kerkman, to recommend the bill for introduction. The motion was approved by a vote of Ayes, 12 (Reps. Ballweg, Benedict, Hines, and Kerkman; and Public Members Alexander, Bazan, Bier, Carlson, Eide, Munsey, Orlando, and Tatili); Noes, 0; and Absent, 4 (Public Members Dowling, Eggebrecht, Haugen, and Ritger).

- ***WLC: 0050/1, relating to a moratorium on rental evictions during a state of emergency related to public health***

Ms. Karls described the bill draft, which would allow the governor to declare a moratorium on rental evictions during a state of emergency related to public health. She commented that the committee might consider whether to exclude from the moratorium rental evictions that are the result of drug or criminal gang activity. The committee asked staff to revise the bill draft to exclude rental evictions that are the result of drug or criminal gang activity.

Representative Kerkman suggested that the committee hear from landlord associations regarding the bill draft. Representative Hines suggested the committee hear from law enforcement. The committee discussed whether a moratorium should be permitted during a state of emergency, not only during a state of emergency related to public health.

Discussion of Agency Responses to Requests for Information

Many of the responses in this section relate to items in Memo No. 2, *Potential Recommendations Submitted for the Committee's Consideration*.

Department of Workforce Development (A-1 to A-3)

Ms. Karls described the response from the Department of Workforce Development (DWD) to potential recommendations A-1 to A-3 set forth in Memo No. 2.

In response to A-1, DWD stated that employers can require their employees to use vacation time when quarantined unless the employer is required to comply with the Wisconsin Family and Medical Leave Act. The law allows an employee to decide whether to use vacation, unpaid leave, or other leave when the employee suffers from a serious health condition. If the committee wanted to implement the recommendation, it could create an exception in the Family and Medical Leave Act.

Representative Kerkman expressed concern about how the potential recommendation would interact with federal law and asked staff to review federal law.

In response to A-2, DWD stated that implementing the recommendation would require a change in state law. Mr. Bazan expressed concern about the unintended consequences of guaranteeing job security. Representative Hines stated that the committee needs to address the insurance aspect of job loss. Dr. Carlson suggested that the committee define quarantine as a disability and allow an employee to utilize existing medical leave law. Professor Bier agreed but wanted to know more about whether the change would be needed.

In response to A-3, DWD suggested that the committee contact the Department of Revenue (DOR). The committee asked staff to contact the DOR for its input.

Department of Workforce Development (A-4)

Ms. Karls described the response from DWD to potential recommendation A-4 from Memo No. 2, relating to income continuation during a widespread emergency.

Professor Bier explained that she intended that her recommendation allow for income continuation outside of unemployment insurance and that the federal Disaster Unemployment Assistance (DUA) program, described in the response from DWD, requires physical damage to a place of employment. She recommended that the committee table the recommendation and see if the federal government is exploring changes to the DUA. The committee asked staff to draft a letter to DWD asking it to find out what, if any, changes have been proposed for the federal DUA.

Department of Health and Family Services (C-6, C-8, and D-5)

Tom Anderson appeared on behalf of the Department of Health and Family Services (DHFS) to answer questions for the committee.

In response to C-6, Mr. Anderson described how most costs of quarantine fall upon the individual being confined and that federal funds, in some cases, offset costs to local health officials. Ms. Munsey expressed concern about situations in which there is no state-declared emergency. She explained that even one or two cases of quarantine can be expensive for local officials and that those quarantined are usually indigent.

The response to C-8 is described in the written response from DHFS. DHFS indicated that it was essential that the National Conference of Commissioners on Uniform State Laws resolve the sections of the Uniform Act dealing with civil liability and Worker's Compensation.

In response to D-5, Mr. Anderson stated that DHFS is willing to formalize a regional planning structure. Rob Rude, from Wisconsin Emergency Management (WEM), described how DHFS and WEM are working on reorganization. Chair Ballweg asked DHFS and WEM to report their progress on reorganization to the Assembly Committee on Homeland Security and State Preparedness in April.

Department of Natural Resources (B-2)

Ms. Shannon described the response from the Department of Natural Resources (DNR) to potential recommendation B-2, namely that DNR believes it currently has sufficient authority to waive requirements for environmental impact statements for projects that are needed because of a declared public health emergency.

Department of Agriculture, Trade, and Consumer Protection (B-2 and carcass disposal)

Robin Schmidt, from the Department of Agriculture, Trade, and Consumer Protection (DATCP), described an example of how the DNR waives environmental impact requirements and indicated that there is sufficient authority to do so.

In addition, Ms. Schmidt described the DATCP draft legislation relating to the transportation and disposal of animal carcasses. She stated that the bill allows more flexibility in disposing of animal carcasses by allowing officials to look at the specific disease and determine which technology offers the best method of disposal. She referred to a guidance document used by DATCP and indicated that she would provide that document to the committee.

Directors of County and Regional Emergency Management Agencies (D-13)

Ms. Karls described the responses from five county emergency management agencies to potential recommendation D-13. The responses indicated that directors were coordinating with private organizations and businesses in their disaster preparedness planning. Chair Ballweg suggested that WEM continue to communicate with local entities.

Larry Reed of WEM mentioned that there are local contacts with local businesses and that the relationships for disaster preparedness planning may not be formal. Mr. Rude stated that management plans can be formalized and that WEM would consider the issue.

Dr. Carlson stated that the state needs a mechanism to identify critical private services at the local level and that the state should encourage and develop such a mechanism. Mr. Bazan mentioned that regional guidelines could be created. Representative Kerkman inquired into using tax write-offs for businesses that donate during a disaster. Mr. Sweet stated that donations could be written off if given to a charitable organization.

Wisconsin Vital Records (C-1)

Peggy Peterson of DHFS explained the response of Wisconsin Vital Records to potential recommendation C-1, namely that it had concerns about allowing nurses to issue death certificates. She stated that the goals of her office are to provide certified copies of vital records that are acceptable to business and government recipients.

She stated that a completed death certificate is not required to bury a body and that in a disaster, coroners and medical examiners are required to sign death certificates. She mentioned that registered nurses would likely be too busy to handle the additional paperwork during an emergency, that training nurses would be difficult, and that coroners and medical examiners historically have legal credibility with insurance companies in signing death certificates. She described the automated process for signing

records that will be implemented in the future. Lastly, she mentioned that a death certificate must be signed within five or six days of death but that no cause of death is needed until 30 days after death and that the 30-day deadline can be extended.

The committee decided not to pursue this recommendation.

Wisconsin Emergency Management (C-7, D-11, Diggers Hotline, and tornado drills)

In response to potential recommendation C-7, Mr. Rude indicated that WEM supports requiring regional directors to be members of and regularly attend hospital and public health consortium monthly meetings and that directors currently attend meetings as their schedules allow.

In response to potential recommendation D-11, Mr. Rude described the current mass evacuation planning for the 12 largest cities in Wisconsin. He indicated that the planning includes looking at the impact on the communities that receive evacuees.

Randi Milsap, legal counsel for the Wisconsin Department of Military Affairs, explained that current law does not require schools to conduct tornado drills, despite statutory requirements that require schools to conduct fire drills. Ms. Milsap stated that tornado drills could be held in conjunction with fire drills and that Ohio has recently enacted a requirement that tornado drills be conducted. Ms. Milsap mentioned that the committee might want to consider these requirements for daycares and universities, in addition to schools. Representative Hines stated that the Legislature should attach some funds if it requires schools to conduct tornado drills. The committee asked staff to draft legislation to require schools to conduct tornado drills that would be incorporated into the current statute on fire drills.

Ms. Milsap also expressed concern about the inability of the Department of Public Instruction (DPI) to distribute information about Tornado Awareness Week. The committee discussed alternative methods of distribution that utilized the Internet. Chair Ballweg requested that staff send a letter to DPI urging them to cooperate with WEM in disseminating tornado information electronically during Tornado Awareness Week.

In addition, Ms. Milsap stated that the Diggers Hotline law does not apply to marking of privately owned and installed transmission facilities. Representative Kerkman mentioned that Representative Montgomery has researched this issue. Chair Ballweg asked that staff contact Representative Montgomery's office to see if he is pursuing legislation.

B-1

On the issue raised by Prof. Bier of holding court and administrative proceedings without parties present during an emergency, Mr. Sweet said that he had contacted Prof. Bier with a suggestion. He explained that the committee could send a letter to the Chief Justice of the Wisconsin Supreme Court, copying in the Director of State Courts, and a letter to the Department of Administration, which includes the Division of Hearings and Appeals, asking that they address this issue in their continuity of operations planning. The committee asked staff to prepare these letters.

Pharmacy Examining Board (C-2)

Ms. Karls described the response from the Pharmacy Examining Board to potential recommendation C-2, namely that an authorized person could pick up medications for 10 people at a time under current law. Chair Ballweg stated that there is still an issue with insurance coverage. Mr. Bazan stated that insurance companies only allow an insured to receive 30 days worth of medication. Chair Ballweg asked staff to get feedback from the insurance industry regarding this potential recommendation.

Office of Justice Assistance (D-7)

Mr. Sweet described the response of the Office of Justice Assistance (OJA) to potential recommendation D-7. OJA responded that it would encourage agencies to develop mutual aid agreements. Chair Ballweg stated that the response does not address the issue of requiring mutual aid agreements as a condition of funding. Mr. Bazan explained that Mr. Ritger, who was not present at the meeting, was concerned with federal money slowing down and with the need to share resources. Mr. Alexander stated that the funding is the incentive to push localities into complying with mutual aid. Prof. Bier suggested that OJA use mutual aid as one criterion to consider in granting funds rather than requiring mutual aid as a condition to funding.

Mr. Bazan described how hospitals have memoranda of understanding (MOU's) regionally. Chair Ballweg requested that staff prepare a letter to OJA, asking it to make mutual aid a grant criterion. Chair Ballweg stated that she would meet with OJA to discuss the necessity of mutual aid agreements.

**Continued Discussion of Memo No. 2,
Potential Recommendations Submitted for the
Special Committee's Consideration, and
Other Possible Committee Recommendations**

The committee discussed items under the following memo headings and made requests of staff as indicated:

E. Liability

Item 1: Protect hospitals and other facilities from liability when activating health care workers who are acting as agents of the state. The committee asked staff to prepare a bill draft to protect hospitals and other facilities from liability caused by actions of volunteers during an emergency.

Item 2: Determine a method of declaring when different (lower) standards of care will be used in providing health care for liability purposes during declared emergencies. Mr. Bazan indicated that he serves on an ethics panel that will discuss this issue and will keep the Assembly Committee on Homeland Security and State Preparedness informed. Chair Ballweg indicated that she will receive a scope statement of the State Expert Panel on Disaster Ethics from Dennis Tomczyk.

Items 3-4: Amend s. 895.51, Stats., to include providing food to governmental bodies and providing the food, not just donating it or selling it at cost, and to include immunity from civil liability to all types of retailers who provide food or other products from their stores directly to consumers during

a disaster. Prof. Bier expressed concern with retailers using immunity to get rid of products and still make a profit but had no concern with donations to government. Chair Ballweg expressed concern about accountability issues if products were donated to the public. Ms. Tatili stated that food distribution happens through the Red Cross and other organizations. Mr. Orlando indicated that he did not want nonprofits to be liable. The committee asked staff to prepare a bill draft to include government bodies and non-food products distributed at or below cost during a declared emergency.

F. Communication

Items 1-2: Ask OJA to restrict funding of communications projects that do not help interoperability and request that OJA develop interoperability standards and provide funding to local agencies that meet those standards. The committee asked staff to prepare a letter to OJA regarding these recommendations.

Items 3-4: Provide statewide communication standards to help address disjointed, sporadic, and uncoordinated local emergency planning and encourage the use of interoperable communications systems. Mr. Bazan described a statewide, electronic communications system that is being developed between the Health Resources and Services Administration (HRSA), WEM, and public health. Dr. Carlson expressed concern that police departments cannot communicate with fire departments. Chair Ballweg stated that OJA should use grant money to encourage interoperability. Mr. Alexander described a plan being developed for the southeast region of the state. The committee asked staff to prepare a letter to OJA regarding these recommendations.

Item 5: Include members representing hospitals and local health agencies on the State Interoperability Executive Committee. Mr. Alexander suggested that members be appointed by the Governor's office. The committee recommended including this in the letter to OJA.

Item 6: Examine more closely the use of communication systems to notify the public of a disaster. Mr. Rude explained that WEM can commandeer radio stations in a state of emergency. Chair Ballweg suggested the use of an emergency alert system similar to a weather alert system. Ms. Milsap indicated that the National Oceanic and Atmospheric Administration wanted the state to contract on behalf of localities but the state was unable to do so. Ms. Milsap believes that such a system will develop in time and that WEM just needs local input. Chair Ballweg agreed to have the Assembly Committee on Homeland Security and State Preparedness monitor this issue.

G. Governmental Bodies

Item 1: Place a high priority on legislative continuity planning and implementation of any necessary legislation. The committee asked staff to prepare a letter to the Joint Committee on Legislative Organization and the Chief Clerks.

Item 2: Review the Open Meetings Law regarding waiver of notice and locations of meetings of local government bodies during declared emergencies. Ms. Karls described the responses from the Alliance of Cities, the League of Wisconsin Municipalities, and the Wisconsin Towns Association, all of which agreed that current law was sufficient. The committee asked staff to forward this information to all municipal organizations for any additional responses.

Item 3: Examine more closely the continuity of government issues, especially the economic functions of government. Chair Ballweg stated that the state has continuity of government plans and that there is a process to ensure economic continuity.

H. Other

Item 1: Consider formation or continuation of an oversight committee such as the Special Committee to meet on a less frequent basis, but to keep meeting to maintain oversight on disaster preparedness issues. Chair Ballweg described the Assembly Committee on Homeland Security and State Preparedness which she is chairing. An aide for Senator Robert Wirth mentioned that the Senate has a similar committee, chaired by Senator Wirth.

Item 2: Provide for an indicator on driver's licenses that the license holder is a first responder, an emergency medical technician, or another person who is authorized to be at the site of an emergency. Chair Ballweg indicated that she met with representatives from the Division of Motor Vehicles (DMV), who indicated that the driver's license could be out-of-date but that credentials could be included in the statewide computer system. Chair Ballweg indicated that DMV suggest that the committee contact OJA to have the information put on the OJA server. Ms. Tatili stated that each organization has its own credentialing system and has to monitor its volunteers. Chair Ballweg said that the purpose of such a system would be to provide a centralized location for the information.

Plans for Future Meetings

The next meeting of the Special Committee will be on *Wednesday, February 14, 2007, at 9:00 a.m., in the Legislative Council Large Conference Room, One East Main Street, Suite 401, Madison.* This is expected to be the last meeting of the Special Committee.

Adjournment

The meeting was adjourned at 3:00 p.m.

JK:wu