

NOVEMBER 11, 2008

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1     **AN ACT ...; relating to:** emergency management, succession of public offices, and  
2     liability and licensure of emergency volunteers.

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***Analysis by the Legislative Reference Bureau***

This is a draft of how chapter 323 would look if 09-0166 was enacted.

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

3                                   **CHAPTER 323**  
4                                   **EMERGENCY MANAGEMENT**  
5                                   **SUBCHAPTER I**  
6                                   **GENERAL PROVISIONS**

7             **323.01 Declaration of policy. (1)** To prepare the state and its subdivisions  
8     to cope with emergencies resulting from an enemy action, a disaster, or the imminent  
9     threat of a disaster, it is declared to be necessary to establish an organization for

1 emergency management, conferring upon the governor and others specified the  
2 powers and duties provided by this chapter.

3 (2) Unless otherwise specified by law, the role of any state agency, including the  
4 department of military affairs and the division, in an emergency declared under this  
5 chapter, is to assist local units of government and local law enforcement agencies in  
6 responding to enemy action enemy action, a disaster, or the imminent threat of a  
7 disaster.

8 (3). This chapter may not limit or in any way affect the responsibility of the  
9 American National Red Cross as authorized by the congress of the United States.

10 **323.02 Definitions.** In this chapter, unless the context clearly indicates  
11 otherwise:

12 (1) “Adjutant general” means the adjutant general of the department of  
13 military affairs.

14 (2) “Administrator” means the administrator of the division.

15 (3) “Biological agent” means any of the following:

16 (a) A select agent that is a virus, bacterium, rickettsia, fungus, or toxin that is  
17 specified under 42 CFR 72, Appendix A.

18 (b) A genetically modified microorganism or genetic element from an organism  
19 under par. (a) that is shown to produce or encode for a factor associated with a  
20 disease.

21 (c) A genetically modified microorganism or genetic element that contains  
22 nucleic acid sequences coding for a toxin under par. (a) or its toxic subunit.

23 (d) An agent specified by the department of health services by rule.

24 (4) “Bioterrorism” means the intentional use of any biological, chemical, or  
25 radiological agent to cause death, disease or biological malfunction in a human,

1 animal, plant, or other living organism in order to influence the policy of a  
2 governmental unit or to intimidate or coerce the civilian population.

3 (5) “Chemical agent” means a substance that has chemical properties that  
4 produce lethal or serious effects in plants or animals.

5 (6) “Division” means the division of emergency management.

6 (7) “Disaster” means a severe or prolonged occurrence, natural or  
7 human-caused, that threatens or negatively impacts health, life, property,  
8 infrastructure, the environment, or critical systems, including agricultural systems.

9 (8) “Emergency management” means all measures undertaken by or on behalf  
10 of the state and its subdivisions to do any of the following:

11 (a) Prepare for and minimize the effect of an enemy action, a disaster, or the  
12 imminent threat of a disaster.

13 (b) Make repairs to or restore infrastructure or critical systems that are  
14 destroyed or damaged by an enemy action or a disaster.

15 (9) “Enemy action” means hostile action by a foreign power that threatens the  
16 security of this state or a portion of this state.

17 (10) “Incident command system” means a functional management system  
18 established to control, direct, and manage the roles, responsibilities, and operations  
19 of all of the agencies involved in a multi-jurisdictional or multi-agency emergency  
20 response.

21 (12) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

22 (13) “Level A release” means a release of a hazardous substance that  
23 necessitates the highest level of protective equipment for the skin and respiratory  
24 systems of emergency response personnel because of any of the following conditions:

1 (a) Substances with a high degree of hazard to the skin are known or suspected  
2 to be present and skin contact is possible.

3 (b) There are present, or there is a potential for, high atmospheric levels of  
4 substances that are harmful to the skin or capable of being absorbed through intact  
5 skin.

6 (c) Operations at the site of the release involve a high potential for exposure  
7 to liquids or particulates that are harmful to the skin or capable of being absorbed  
8 through intact skin.

9 (d) Response operations must be conducted in confined, poorly ventilated areas  
10 and the absence of conditions under subds. 1. to 3. has not been established.

11 **(14)** “Level B release” means a release of a hazardous substance that  
12 necessitates the highest level of protective equipment for the respiratory systems of  
13 emergency response personnel, but less skin protection than a level A release,  
14 because operations at the site of the release do not involve a high potential for  
15 exposure to liquids or particulates that are harmful to the skin or capable of being  
16 absorbed through intact skin and any of the following conditions exists:

17 (a) The type and concentration of substances in the atmosphere have been  
18 identified and are dangerous to respiration but are not harmful to skin or capable of  
19 being absorbed through intact skin.

20 (b) The atmosphere contains less than 19.5% oxygen but does not contain  
21 substances that are harmful to skin or capable of being absorbed through intact skin.

22 (c) Vapors or gases are present that have not been completely identified but it  
23 is known that those vapors or gases are not harmful to skin or capable of being  
24 absorbed through intact skin.

**(15)** “Local emergency response team” means a team that the local emergency planning committee identifies under s. 323.71 (2m) (e).

**(16)** “Local health department” has the meaning given in s. 250.01 (4).

**(17) “Local unit of government” means a county, city, village, or town.**

**(19) “Public health emergency”** means the occurrence or imminent threat of an illness or health condition that meets all of the following criteria:

(a) Is believed to be caused by bioterrorism or a novel or previously controlled or eradicated biological agent.

(b) Poses a high probability of any of the following:

1. A large number of deaths or serious or long-term disabilities among humans.

2. A high probability of widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people.

**(20)** “Radiological agent” means radiation or radioactive material at a level that is dangerous to human health.

## SUBCHAPTER II

## POWERS AND DUTIES RELATED TO EMERGENCY MANAGEMENT

**323.10 Declaration by governor.** The governor may issue an executive order declaring a state of emergency for the state or any portion of the state if he or she determines that an emergency resulting from an enemy action, a disaster, or the imminent threat of a disaster exists. If the governor determines that a public health emergency exists, he or she may issue an executive order declaring a state of emergency related to public health for the state or any portion of the state and may designate the department of health services as the lead state agency to respond to that emergency. A state of emergency resulting from an enemy action shall not

1 exceed 60 days, and any other state of emergency shall not exceed 30 days, unless  
2 the state of emergency is extended by joint resolution of the legislature. A copy of  
3 the executive order shall be filed with the secretary of state. The executive order may  
4 be revoked at the discretion of either the governor by executive order or the  
5 legislature by joint resolution.

6 **323.11 Declaration by local government.** The governing body of any local  
7 unit of government may declare, by ordinance or resolution, an emergency existing  
8 within the local unit of government whenever conditions arise by reason of a riot or  
9 civil commotion, an enemy action, a disaster, or an imminent threat of a disaster, that  
10 impairs transportation, food or fuel supplies, medical care, fire, health or police  
11 protection, or other critical systems of the local unit of government. The period of the  
12 emergency shall be limited by the ordinance or resolution to the time during which  
13 the emergency conditions exist or are likely to exist.

14 **323.12 Governor; powers and duties. (1) CONTINUING DUTIES.** The governor  
15 shall do all of the following:

16 (a) Review orders establishing or altering emergency management areas.  
17 (b) Review state emergency management plans and modifications thereof.  
18 (c) Determine responsibilities of state departments and independent agencies  
19 with respect to emergency management and by order direct such departments and  
20 agencies in utilizing personnel, facilities, supplies, and equipment before and during  
21 a state of emergency.

22 **(2) CONTINUING POWERS.** The governor may do all of the following:

23 (a) On behalf of the state, enter into mutual aid agreements concerning  
24 emergency management with other states.

1           (b) Accept from any source gifts and grants including services for emergency  
2 management purposes and may authorize state, county, town, and municipal officers  
3 to receive such gifts and grants. When grants require participation by a local unit  
4 of government, the state may transfer title to equipment acquired through such  
5 agreement to participating local units of government.

6           (c) If the governor determines that a condition of civil disorder or a threat to  
7 the safety of persons on state property or damage or destruction to state property  
8 exists, he or she may, without declaring an emergency, call out the state traffic patrol  
9 or the conservation warden services or members of that patrol or service for use in  
10 connection with the threat to life or property.

11           **(3) DUTIES DURING AN EMERGENCY.** During a state of emergency declared under  
12 s. 323.10, the governor shall enlist the assistance of the division, issue orders, and  
13 delegate such authority as is necessary to the administrator.

14           **(4) POWERS DURING AN EMERGENCY.** The governor may do all of the following  
15 during a state of emergency proclaimed under s. 323.10:

16           (a) Declare priority of emergency management contracts over other contracts,  
17 allocate materials and facilities in his or her discretion, and take, use, and destroy,  
18 in the name of the state, private property for emergency management purposes. The  
19 governor shall keep records of that action. Those records shall be evidence of a claim  
20 against the state. The claim against the state shall be referred to the claims board  
21 under s. 16.007.

22           (b) Issue such orders as he or she deems necessary for the security of persons  
23 and property.

1 (c) Contract on behalf of the state with any person to provide, on a cost basis,  
2 equipment and services to be used to respond to an enemy action, a disaster, or the  
3 imminent threat of a disaster.

4 (d) During a state of emergency related to public health, suspend the provisions  
5 of any administrative rule if the strict compliance with that rule would prevent,  
6 hinder, or delay necessary actions to respond to the emergency and increase the  
7 health threat to the population.

8 **323.13 Adjutant general; powers and duties. (1) CONTINUING DUTIES.** The  
9 adjutant general shall:

10 (a) Serve as the governor's principal assistant for directing and coordinating  
11 emergency management activities

12 (b) Subject to approval by the governor, develop and adopt a state plan of  
13 emergency management for the security and protection of persons and property. In  
14 developing the plan, the adjutant general shall seek the advice of the department of  
15 health services with respect to the emergency medical aspects of the plan. The plan  
16 shall specify equipment and personnel standards, and shall require the use of the  
17 incident command system, and specify the type of incident command system, by all  
18 emergency response agencies, including local health departments, during a state of  
19 emergency declared under ss. 323.10 or 323.11.

20 (c) Prescribe and carry out statewide training programs and exercises to  
21 develop emergency management proficiency, disseminate information including  
22 warnings of enemy action, and coordinate emergency management programs  
23 between counties. The training programs shall include training in managing  
24 emergency operations utilizing the incident command system for local unit of  
25 government officials, officers, and employees whose duties include responding to



1 emergencies, including officers and employees of local health departments. The  
2 adjutant general shall consult with the department of health services regarding the  
3 provision of incident command system training to local health department  
4 personnel. To the extent possible, the adjutant general shall utilize federal funding  
5 to provide incident command system training.

6 (d) Furnish guidance and promulgate rules for emergency management  
7 programs for local units of government, and prescribe nomenclature for all levels of  
8 emergency management. The rules shall include a requirement that local unit of  
9 government emergency management programs adopted under s. 323.16 (1) (a) 1. and  
10 (b) 1. utilize the incident command system during a state of emergency declared  
11 under s. 323.10 or 323.11 or in any other multi-jurisdictional or multi-agency  
12 emergency response. The standards for fire, rescue, and emergency medical services  
13 shall include the adoption of the intergovernmental cooperation Mutual Aid Box  
14 Alarm System as a mechanism that may be used for deploying personnel and  
15 equipment in a multi-jurisdictional or multi-agency emergency response.

16 (dm) If the adjutant general finds that a county has not developed, adopted and  
17 implemented an emergency management plan, refuse to approve grants of funds or  
18 items of equipment to the county until the county does so. If the county fails to use  
19 the funds or items of equipment granted under this chapter in accordance with the  
20 agreement under which the grant was made, the adjutant general shall refuse to  
21 make any additional grants to the county until it has complied with the conditions  
22 of the prior grant, and he or she may start recovery proceedings on the funds and  
23 items of equipment which have not been used in accordance with the conditions of  
24 the grant.

1 (e) Provide assistance to the Wisconsin wing of the civil air patrol from the  
2 appropriation under s. 20.465 (3) (f) for the purpose of enabling the patrol to perform  
3 its assigned missions and duties as prescribed by U.S. air force regulations.  
4 Expenses eligible for assistance are aircraft acquisition and maintenance,  
5 communications equipment acquisition and maintenance and office staffing and  
6 operational expenses. The civil air patrol shall submit vouchers for expenses eligible  
7 for assistance to the division.

8 (f) No later than 90 days after a state of emergency relating to public health is  
9 declared and the department of health services is not designated under s. 323.10 as  
10 the lead state agency to respond to that emergency and no later than 90 days after  
11 the termination of this state of emergency relating to public health, submit to the  
12 legislature under s. 13.172 (2) and to the governor a report on all of the following:

13 1. The emergency powers used by the department of military affairs or its  
14 agents.

15 2. The expenses incurred by the department of military affairs and its agents  
16 in acting under the state of emergency related to public health.

17 **(2) CONTINUING POWERS.** The adjutant general may do all of the following:

18 (a) Divide the state into emergency management regions composed of whole  
19 counties by general or special written orders subject to approval by the governor, and  
20 modify the boundaries of those regions as changed conditions warrant.

21 (b) Appoint a director of emergency management for each region under par. (a)  
22 under the classified service on either a part-time or full-time basis, or ask the  
23 governor to designate any state officer or employee as acting regional director on a  
24 part-time basis.

1 (c) Designate and post highways as emergency management routes closed to  
2 all but authorized vehicles when required for training programs and exercises.

3 (d) Prescribe traffic routes and control traffic during a state of emergency.

4 (e) Organize and train state mobile support units to aid any region during a  
5 state of emergency. The units may participate in training programs and exercises  
6 within or outside the state.

7 (f) Request the department of health services to inspect or provide for the  
8 inspection of shipments of radioactive waste, obtain and analyze data concerning the  
9 radiation level of shipments of radioactive waste and issue reports concerning these  
10 shipments and radiation levels. The adjutant general may assess and collect and  
11 receive contributions for any costs incurred under this subdivision from any person  
12 who produced the radioactive waste which is the subject of the activity for which the  
13 costs are incurred. In this subdivision, “radioactive waste” has the meaning given  
14 in s. 293.25 (1) (b).

15 (g) Assess and collect and receive contributions for any costs incurred by state  
16 agencies to establish and maintain radiological emergency response plans related to  
17 nuclear generating facilities.

18 (h) Make grant payments for disaster assistance under ss. 323.30 and 323.40.

19 **323.16 Local government; powers and duties. (1)** CONTINUING DUTIES. (a)

20 1. Subject to subd. 3., the each county board shall develop and adopt an emergency  
21 management plan and program consistent with the state plan of emergency  
22 management under s. 323.13 (1) (b).

23 2. Each county board shall appoint a head of emergency management. In  
24 counties having a county executive under s. 59.17, the county board shall designate  
25 the county executive or confirm his or her appointee as county head of emergency

1 management. Notwithstanding sub. (2) (b), an individual may not simultaneously  
2 serve as the head of emergency management for two or more counties.

3 3. Each county board shall designate a committee of the board as a county  
4 emergency management committee. The chairperson of the county board shall  
5 designate the chairperson of the committee. In counties having a county executive  
6 under s. 59.17, the committee shall retain policy-making and rule-making powers  
7 in the establishment and development of county emergency management plans and  
8 programs.

9 (b) 1. The governing body of each city, village, or town shall develop and adopt  
10 an emergency management plan and program consistent with the state plan of  
11 emergency management under s. 323.13 (1) (b).

12 2. The governing body of each city, village, or town shall appoint a head of  
13 emergency management services.

14 **(2) CONTINUING POWERS.** (a) The governing body of a local unit of government  
15 may appropriate funds and levy taxes for its emergency management program under  
16 sub. (1).

17 (b) Local units of government may cooperate under s. 66.0301 to furnish  
18 services, combine offices, and finance emergency management programs.

19 (c) Local units of government may contract for emergency management  
20 services with political subdivisions and emergency management units of this state,  
21 and upon prior approval of the adjutant general, with such entities in bordering  
22 states. A copy of each agreement shall be filed with the adjutant general within 10  
23 days after execution of that agreement.

24 **(3) DUTIES DURING AN EMERGENCY.** (a) If the governing body of a local unit of  
25 government declares an emergency under s. 323.11 and intends to make use of

1 behavioral health providers, health care providers, pupil services providers, or  
2 substance abuse prevention providers, as specified in s. 250.042 (4), the governing  
3 body or its agent shall, as soon as possible, notify the department of health services  
4 of this intent.

5 (b) During a state of emergency declared by the governor, a local unit of  
6 government situated within the area to which the governor's executive order applies  
7 may employ personnel, facilities, and other resources consistent with the plan  
8 adopted under sub. (1) (a) 1. or (b) 1. to cope with the problems<sub>i</sub> that resulted in the  
9 governor declaring the emergency. Nothing in this chapter prohibits local units of  
10 government from employing their personnel, facilities, and resources consistent  
11 with the plan adopted under sub. (1) (a) 1. or (b) 1. to cope with the problems of local  
12 public emergencies except where restrictions are imposed by federal regulations on  
13 property donated by the federal government.

14 **(4) POWERS DURING AN EMERGENCY.** (a) The emergency power of the governing  
15 body conferred under s. 323.11 includes the general authority to order, by ordinance  
16 or resolution, whatever is necessary and expedient for the health, safety, protection,  
17 and welfare of the of persons and property within the local unit of government in the  
18 emergency and includes the power to bar, restrict, or remove all unnecessary traffic,  
19 both vehicular and pedestrian, from the highways, notwithstanding any provision  
20 of chs. 341 to 349.

21 (b) If, because of the emergency conditions, the governing body of the local unit  
22 of government is unable to meet promptly, the chief executive officer or acting chief  
23 executive officer of any local unit of government shall exercise by proclamation all  
24 of the powers conferred upon the governing body under sub. (1) or (2) which within  
25 the discretion of the officer appear necessary and expedient for the purposes herein

1 set forth. The proclamation shall be subject to ratification, alteration, modification,  
2 or repeal by the governing body as soon as that body can meet, but the subsequent  
3 action taken by the governing body shall not affect the prior validity of the  
4 proclamation.

5 **323.17 Heads of emergency management; powers and duties. (1)**

6 CONTINUING DUTIES (a) The head of emergency management for each local unit of  
7 government shall for his or her respective unit of government, implement the plan  
8 adopted under s. 323.16 (1) (a) 1. or (b) 1., whichever is appropriate, and perform such  
9 other duties related to emergency management as are required by the governing  
10 body and the emergency management committee of the governing body when  
11 applicable. The emergency management plans shall require the use of the incident  
12 command system by all emergency response agencies, including local health  
13 departments, during a state of emergency declared under s. 323.10 or 323.11.

14 (b) The head of emergency management for each county shall coordinate and  
15 assist in developing city, village, and town emergency management plans within the  
16 county, integrate such plans with the county plan, advise the department of military  
17 affairs of all emergency management planning in the county and submit to the  
18 adjutant general such reports as he or she requires, direct and coordinate emergency  
19 management activities throughout the county during a state of emergency, and  
20 direct countywide emergency management training programs and exercises.

21 (c) The head of emergency management in each city, village and town  
22 municipality shall do all of the following:

23 1. Direct local emergency management training programs and exercises.

24 2. Direct participation in emergency management programs and exercises that  
25 are ordered by the adjutant general and the county head of emergency management.

1           3. Advise the county head of emergency management on local emergency  
2 management programs.

3           4. Submit to the county head of emergency management any reports he or she  
4 requires.

5           **(4) POWERS DURING AN EMERGENCY.** During a state of emergency declared by the  
6 governor, the head of emergency management in each local unit of government, on  
7 behalf of his or her respective local unit of government, may contract with any person  
8 to provide equipment and services on a cost basis to be used to respond to an enemy  
9 action, a disaster, or the imminent threat of a disaster.

10           **323.175 Powers of law enforcement officers.** During any state of  
11 emergency declared by the governor or during any training program or exercises  
12 authorized by the adjutant general, any law enforcement officer, when legally  
13 engaged in traffic control, escort duty or protective service, may carry out the  
14 functions anywhere in the state but shall be subject to the direction of the adjutant  
15 general through the sheriff of the county in which an assigned function is performed.

16           **323.177 State traffic patrol officers and conservation wardens.** If the  
17 governor calls out the state traffic patrol or conservation warden services, or  
18 members of the patrol or service, under s. 323.12 (2) (c), the state traffic patrol officers  
19 or conservation wardens subject to the call shall have the powers of a law  
20 enforcement officer for the duration determined by the governor, except that the  
21 officers and wardens may not be used in or take part in any dispute or controversy  
22 between an employer and employee concerning wages, hours, labor, or working  
23 conditions.

24           **323.19 Prohibition against restricting firearms or ammunition during**  
25 **emergency.** A person who is granted emergency powers under this subchapter may

1 not use those powers to restrict the lawful possession, transfer, sale, transport,  
2 storage, display, or use of firearms or ammunition during an emergency.

3 **323.195 Emergency use of vehicles.** In responding to an official request for  
4 help during any state of emergency, any person may operate any vehicle without  
5 regard for motor vehicle registration laws and without being subject to arrest under  
6 s. 341.04.

7 **323.22 Personnel restrictions (1)** No personnel, while performing  
8 emergency management functions consistent with a plan adopted under s. 323.13 (1)  
9 (b) or 323.16 (1) (a) 1. or (b) 1., shall participate in any form of political activity or be  
10 employed directly or indirectly for any political activity.

11 **(2)** No personnel, while performing emergency management functions  
12 consistent with a plan adopted under s. 323.13 (1) (b) or 323.16 (1) (a) 1. or (b) 1., shall  
13 be employed to interfere with the orderly process of a labor dispute.

14 **(3)** No person may be employed or associated in any capacity in any state or  
15 local unit of government emergency management program under s. 323.13 (1) (b) or  
16 323.16(1) (a) 1. or (b) 1. who advocates a change by force or violence in the  
17 constitutional form of government of the United States or this state or who has been  
18 convicted of or is under indictment or information charging any subversive act  
19 against the United States.

20 **323.23 Penalties. (1)** Whoever intentionally fails to comply with an order of  
21 an agent of the state or a local unit of government that is engaged in emergency  
22 management activities under this chapter issued during a state of emergency or  
23 during any related training program or exercises is subject to a forfeiture of not more  
24 than \$200.



**(2)** The local unit of government may provide penalties for violation of any emergency ordinance or resolution not to exceed a \$200 forfeiture.

### SUBCHAPTER III

## DISASTER ASSISTANCE PROGRAMS

**323.30 Federal disaster assistance.** The adjutant general shall make payments from the appropriation under s. 20.465 (3) (e) 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 section is contingent upon copayment of that share by the local government, but not to exceed 12.5% of the total eligible cost of assistance. No payment may be made under this subdivision without the prior approval of the secretary of administration.

**323.31 State disaster assistance.** From the appropriations under s. 20.465 (3) (b) and (s), the adjutant general shall make payments to local governmental units, as defined in s. 19.42 (7u), for the damages and costs incurred as the result of a disaster if federal disaster assistance is not available for that disaster because the governor's request that the president declare the disaster a major disaster under 42 USC 5170 has been denied or because the disaster, as determined by the department of military affairs, does not meet the statewide or countywide per capita impact indicator under the public assistance program that is issued by the federal emergency management agency. To be eligible for a payment under this subdivision, the local governmental unit shall pay 30 percent of the amount of the damages and costs resulting from the disaster. The department of military affairs shall

1 promulgate rules establishing the application process and the criteria for  
2 determining eligibility for payments under this subdivision.

#### 3 SUBCHAPTER IV

#### 4 LIABILITY AND EXEMPTIONS

5 **323.40 Responsibility for worker's compensation and liability. (1)** An  
6 employee of a local unit of government's emergency management program is an  
7 employee of that local unit of government for worker's compensation under ch. 102,  
8 and for issues related to a legal action under ss. 893.80, 895.35, and 895.46, unless  
9 the responsibility to pay worker's compensation benefits or issues related to the legal  
10 action under ss. 893.80, 895.35 and 895.46 are assigned as provided under s. 66.0313  
11 or under an agreement between the local unit of government and the state or another  
12 local unit of government.

13 **(2)** A volunteer who registers in writing with a local unit of government's  
14 emergency management program is an employee of the local unit of government for  
15 worker's compensation under ch. 102, and for issues related to a legal action under  
16 ss. 893.80, 895.35, and 895.46, for the duration of the time provided in the written  
17 registration.

\*\*\*\*NOTE: Do we need the duration language?

18 **(3) (a)** In any calendar year, if the amount the local unit of government is liable  
19 for under sub. (1) or (2) plus costs incurred under s. 323.41 exceed \$1 per capita of  
20 the local unit of government's population, the state shall reimburse the local unit of  
21 government the amount of the excess.

22 **(b)** In addition, the state shall reimburse a local unit of government for any  
23 future expenses for worker's compensation and expenses under ss. 893.80, 895.35

1 and 895.46 that result from an incident that occurred in a calendar year for which  
2 the state reimbursed the local unit of government under par. (a).

3 (c) The reimbursement under this subsection shall be made from the  
4 appropriation in s. 20.465 (3) (a) upon approval of the adjutant general.

5 **323.41 Bearing of losses.** Subject to s. 323.40 (3), any loss arising from the  
6 damage to or destruction of government-owned equipment utilized in any  
7 authorized emergency management activity shall be borne by the owner of the  
8 equipment.

9 **323.42 Exemption from liability. (1)** No person who provides equipment,  
10 materials, facilities, labor, or services is liable for the death of or injury to any person  
11 or damage to any property caused by his or her actions if the person did so under all  
12 of the following conditions:

13 (a) Under the direction of the governor, the adjutant general, the governing  
14 body, chief or acting chief executive officer, or head of emergency management  
15 services of any county, town, municipality, or federally recognized American Indian  
16 tribe or band in this state, the department of health services if that department is  
17 designated by the governor under s. 323.10, or the local health department acting  
18 under s. 251.05 (3) (e).

19 (b) In response to an enemy action, a disaster, the imminent threat of a disaster,  
20 or a federally declared state of emergency or during a state of emergency declared  
21 by the governor.

22 **(2)** This subsection does not apply if the person's act or omission involved  
23 reckless, wanton, or intentional misconduct.

24 **(3)** This subsection does not affect the right of any person to receive benefits  
25 to which he or she otherwise would be entitled under the worker's compensation law

1 or under any pension law, nor does it affect entitlement to any other benefits or  
2 compensation authorized by state or federal law.

3 (b) Any person owning or controlling real property who gratuitously grants the  
4 use of that real property for the purposes stated in par. (a) shall make known to the  
5 licensee any hidden dangers or safety hazards which are known to the owner or  
6 occupant of the real property that might possibly result in death or injury or loss of  
7 property to any person making use of the property.

8 **323.44 Public shelters; immunity from civil liability. (1)** Any person  
9 owning or controlling real property who voluntarily and without compensation  
10 grants to the state or any of its political subdivisions a license or privilege, or  
11 otherwise permits the state or any of its political subdivisions to inspect, designate  
12 and use the whole or any part of the real property for the purpose of sheltering  
13 persons during enemy action, a disaster, an imminent threat of a disaster, or a  
14 related training exercise, shall, together with his or her successors in interest, if any,  
15 not be civilly liable for negligently causing the death of or injury to any person on or  
16 about the real property under the license, privilege, or permission or for loss or  
17 damage to the property of any person, if the owner or controller has complied with  
18 sub. (2).

19 **(2)** Any person owning or controlling real property who gratuitously grants the  
20 use of that real property for the purposes stated in sub. (1) shall make known to the  
21 licensee any hidden dangers or safety hazards which are known to the owner or  
22 occupant of the real property that might possibly result in death or injury or loss of  
23 property to any person making use of the property.

## 24 SUBCHAPTER VII

## 25 EMERGENCY PLANNING

**323.70 Hazardous substances information and emergency planning.**

**(1) DEFINITIONS.** In this subchapter:

(b) “Committee” means a local emergency planning committee created under s. 59.54 (8) (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) 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           1. A hazardous chemical which, if used by or present at a facility, makes the  
2 facility subject to the requirements of sub. (5) (c); or

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

5           (k) “Toxic chemical” means a toxic chemical covered under 42 USC 11023 (c).

6           **(2) DUTIES OF THE DIVISION.** The division shall:

7           (a) Serve as the state emergency response commission under the federal act.

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

9           (bg) Promulgate rules establishing an amount not to exceed \$6,000 that may  
10 be an eligible cost for computers in an emergency planning grant under s. 323.71 (2)  
11 (br).

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

15           (d) Administer the grant program under s. 323.71.

16           (e) At least annually, submit a report to the governor indicating whether each  
17 county has a committee and whether the composition of each committee conforms to  
18 42 USC 11001 (c).

19           (f) If the composition of a county’s committee does not conform to 42 USC 11001  
20 (c), inform the county board of that fact and of the county board’s duty, under s. 59.54  
21 (8) (a) 1., to create a committee with members as specified in 42 USC 11001 (c).

22           **(3) DUTIES OF COMMITTEES.** A committee shall:

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

24           (b) Upon receipt by the committee or the committee’s designated community  
25 emergency coordinator of a notification under sub. (5) (b) of the release of a hazardous

1 substance, take all actions necessary to ensure the implementation of the local  
2 emergency response plan.

3 (c) Consult and coordinate with the county board, the county and local heads  
4 of emergency management designated under s. 323.16 (1) (a) 2. or (b) 2. and the  
5 county emergency management committee designated under s. 323.16 (1) (a) 3. in  
6 the execution of the local emergency planning committee's duties under this section.

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

9 (a) Upon receipt of a notification under sub. (5) (b) or s. 292.11 (2) of the release  
10 of a hazardous substance, provide all information contained in the notification to the  
11 division.

12 (b) Have the same powers and duties at the time of a release of a hazardous  
13 substance as are given to it under s. 292.11, including the investigation of releases  
14 of hazardous substances, the repair of any environmental damage which results  
15 from the release and the recovery of costs from responsible parties. The department  
16 of natural resources may also, at the time of a release of a hazardous substance,  
17 identify and recommend to the division and the committee measures to lessen or  
18 mitigate anticipated environmental damage resulting from the release.

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

22 **(4m)** COOPERATION. A state agency or local governmental unit may assist the  
23 division or a committee in the performance of its duties and may enter into an  
24 agreement with the division or a committee.

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

4           (b) All facilities in this state covered under 42 USC 11004 shall comply with the  
5 notification requirements of 42 USC 11004. Notification of the department of  
6 natural resources of the discharge of a hazardous substance under s. 292.11 (2) shall  
7 constitute the notification of the division required under 42 USC 11004 if the  
8 notification contains the information specified in 42 USC 11004 (b) (2) or (c).

9           (c) All facilities in this state covered under 42 USC 11021 and all public  
10 agencies and private agencies in this state at which a hazardous chemical is present  
11 at or above an applicable threshold quantity shall comply with the reporting  
12 requirements under 42 USC 11021 and 11022. The division shall implement  
13 minimum threshold levels for reporting by retail gas stations that are identical to the  
14 minimum threshold levels for reporting under 42 USC 11021 and 11022.

15           (d) The following facilities shall comply with the toxic chemical release form  
16 requirements under 42 USC 11023 and shall submit copies of all toxic chemical  
17 release forms to the department of natural resources:

18           1. All facilities subject to 42 USC 11023.

19           2. All public agencies and private agencies at which a toxic chemical is used at  
20 or above an applicable threshold quantity.

21           3. All facilities with 10 or more employees in major group classifications 10 to  
22 13 in the standard industrial classification manual, 1987 edition, published by the  
23 U.S. office of management and budget, at which a toxic chemical is used at or above  
24 an applicable threshold quantity, except that compliance with the toxic chemical  
25 release form requirements under this subdivision is not required for the placement



1 of a toxic chemical in a storage or disposal site or facility that is located at a facility  
2 with a permit under ch. 293 if the toxic chemical consists of or is contained in  
3 merchantable by-products as defined in s. 293.01 (7), minerals as defined in s. 293.01  
4 (8) or refuse as defined in s. 293.01 (25).

5 (e) The reporting procedures for trade secrets under 42 USC 11042 shall apply  
6 to all facilities in this state subject to the requirements under par. (a), (c), or (d). For  
7 the purposes of applying this subdivision to public agencies and private agencies, the  
8 division shall have the powers and duties granted to the administrator of the U.S.  
9 environmental protection agency under 42 USC 11042.

10 (f) All facilities in this state subject to the requirements under par (c) or (d) shall  
11 comply with the procedures for providing information under 42 USC 11043.

12 **(5m)** FURNISHING INFORMATION. If the division or a committee requests, in  
13 writing, information relating to the federal act or to this section, a facility shall  
14 furnish the information in the manner requested.

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

18 **(7)** FACILITY FEES. (a) The division shall establish, by rule, the following fees  
19 at levels designed to fund the division's administrative expenses and the grants  
20 under s. 323.71:

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

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

1           (b) The operator of a facility subject to the requirements of sub. (5) (a) or (c).  
2 shall pay the fees under par. (a). The division may establish, by rule, a surcharge to  
3 be paid by the operator of a facility if the operator fails to pay the fees under par. (a)  
4 in a timely manner. The surcharge under this paragraph shall not exceed 20% of the  
5 original fee.

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

9           (dm) The operator of a facility at which petroleum products are received by tank  
10 truck, tank trailer or railroad tank car and stored for resale is exempt from the fees  
11 under par. (a) 2. with respect to gasoline and diesel fuel present at that facility.

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

14           **(7m)** INSPECTIONS. (a) An authorized inspector of the division or the committee  
15 for the county in which a facility is located may enter and inspect any facility or any  
16 pertinent record relating to the facility at any reasonable time for the purpose of  
17 determining whether the facility is complying with this section and rules  
18 promulgated under this section. The division or committee, if requested, shall  
19 furnish to the operator of the facility a report setting forth all facts found which relate  
20 to compliance with this section and rules promulgated under this section.

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

1           **(8) ENFORCEMENT.** (a) The department of justice, at its own discretion or at the  
2 request of the division or the committee or district attorney for the county in which  
3 the violation is alleged to have occurred, shall enforce subs. (2) to (7) and rules  
4 promulgated under subs. (2) to (7). In any action commenced under this paragraph,  
5 the department of justice may request the assistance of the district attorney for the  
6 county in which the violation is alleged to have occurred and the district attorney  
7 shall provide the requested assistance.

8           (b) In addition to any other relief granted, the court may grant injunctive relief  
9 to restrain violations of subs. (2) to (7) and rules promulgated under subs. (2) to (7).

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

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

13           a. Any person for failure to submit a follow-up emergency notice under 42 USC  
14 11004 (c), as applied under sub. (5) (b).

15           b. Any person for violation of sub. (5) (c) or (d).

16           c. The division for failure to render a decision in response to a petition under  
17 42 USC 11042 (d), as applied under sub. (5) (e), within 9 months after receipt of the  
18 petition.

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

21           e. The division for failure to respond to a request for information under 42 USC  
22 11022 (e) (3), as applied under sub. (2) (a).

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

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

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

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

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

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

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

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

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

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

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

1           **(11) PENALTIES.** (a) Any person who violates sub. (5) (a), (b) or (d), or the  
2 emergency and hazardous chemical inventory form requirements of 42 USC 11022,  
3 as applied under sub. (5) (c), or any rule promulgated under sub. (5) (a), (b) or (d) or  
4 concerning emergency and hazardous chemical inventory form requirements shall  
5 forfeit not less than \$100 nor more than \$25,000. Total forfeitures for the failure of  
6 a facility to report multiple releases of hazardous substances covered under 42 USC  
7 11004, as applied under sub. (5), shall not exceed \$75,000 per day of offense.

8           (b) Any person who knowingly and willfully fails to report the release of a  
9 hazardous substance covered under 42 USC 11004 as required under sub. (5) (b) or  
10 any rule promulgated under sub. (5) (b) is subject to the following penalties:

11           1. For the first offense, the person is guilty of a Class I felony, except that,  
12 notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be  
13 fined not more than \$25,000.

14           2. For the 2nd and subsequent offenses, the person is guilty of a Class I felony,  
15 except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the  
16 person may be fined not more than \$50,000.

17           (c) Any person who violates sub. (5) (e) or (f). or the material safety data sheet  
18 requirements of 42 USC 11021, as applied under sub. (5) (c), or any rule promulgated  
19 under sub. (5) (e) or (f). or concerning material safety data sheet requirements shall  
20 forfeit not less than \$50 nor more than \$10,000.

21           (d) Any person who knowingly and willfully releases a trade secret entitled to  
22 protection under 42 USC 11042, as applied under sub. (5) (e), shall be fined not less  
23 than \$100 nor more than \$20,000 or imprisoned for not more than one year in the  
24 county jail or both.

1 (dg) Except as provided in this paragraph, any person who negligently makes  
2 a false statement or representation in any document provided by the operator of a  
3 facility or required to be maintained by the operator of a facility under the federal  
4 act, this section or rules promulgated under this section shall forfeit not less than  
5 \$100 nor more than \$25,000. This penalty does not apply to the division, a committee  
6 or a member of the division or a committee.

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

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

12 **323.71 Emergency planning grants. (1) GENERAL.** (a) There is created an  
13 emergency planning grant program for the purpose of assisting committees to  
14 comply with the requirements of s. 323.70 and the federal act.

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

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

19 (a) Maintaining emergency response plans required under 42 USC 11003,  
20 including the cost of maintaining facility plans.

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

23 (br) Subject to sub. (2m), 80% of the costs of computers and emergency response  
24 equipment, but not to exceed \$10,000. In-kind contributions may be used to meet  
25 the committee's contribution under this paragraph.

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

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

6 (dm) Hazardous materials response supplies.

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

9 **(2m)** STRATEGIC PLAN. A committee is eligible for grant funds under sub. (2) (br)  
10 for emergency response equipment only if it submits to the division a strategic plan  
11 for emergency response to hazardous substance releases that includes all of the  
12 following:

13 (a) An analysis of the risks of hazardous substance releases in the county.

14 (b) Identification of the existing capability for emergency response to  
15 hazardous substance releases in the county.

16 (c) An assessment of needs, including equipment and training needs, related  
17 to emergency response to hazardous substance releases in the county.

18 (d) A process to maintain or increase the capability for emergency response to  
19 hazardous substance releases in the county.

20 (e) Identification of a local emergency response team that is capable of  
21 responding to a level B release that occurs at any place in the county and whose  
22 members meet the standards for hazardous materials technicians in 29 CFR  
23 1910.120 (q) (6) (iii) and national fire protection association standards NFPA 471 and  
24 472.

1 (f) Procedures for local emergency response team actions that are consistent  
2 with local emergency response plans developed under s. 323.70 (3) and the state  
3 contingency plan established under s. 292.11 (5).

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

6 1. The costs of each new facility plan completed by the committee and approved  
7 by the division in the period covered by the grant.

8 2. All costs incurred by the committee in the period covered by the grant related  
9 to subs. (2) (b) to (dm) and (2m).

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

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

15 (c) Notwithstanding sub. (2), the division shall deny that portion of a grant  
16 calculated under par. (a) 2. if the division determines that the committee has failed  
17 to meet grant obligations, including the development, review, exercise or  
18 implementation of local emergency response plans as required under s. 166.20 or the  
19 federal act.

20 (e) Annually, the division shall establish a formula to determine the amount  
21 of emergency planning grant funds available to each county.

22 **(4) PAYMENT OF GRANTS.** Annually, the division shall review all applications  
23 received under this section and make grants to committees from the appropriations  
24 under s. 20.465 (3) (jm) and (r). If insufficient funds are available to pay all approved  
25 grants, the division shall prorate the available funds among the eligible applicants



1 in proportion to the approved grant amounts. A prorated payment shall be deemed  
2 full payment of the grant.

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

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

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

## 17 SUBCHAPTER VIII

### 18 EMERGENCY RESPONSE TEAMS

#### 19 **323.80 Hazardous substance emergency response.**

20 (1) In this subchapter:

21 (a) “Hazardous substance” has the meaning given in s. 299.01 (6).

22 (b) “Local agency” means an agency of a county, city, village, or town, including  
23 a municipal police or fire department, a municipal health organization, a county  
24 office of emergency management, a county sheriff, an emergency medical service, a  
25 local emergency response team, or a public works department.

1           (d) “Local emergency response team” means a team that the committee  
2 identifies under s. 166.21 (2m) (e).

3           **(2)** The division shall contract with no more than 9 regional emergency  
4 response teams, one of which shall be located in La Crosse County. Each regional  
5 emergency response team shall assist in the emergency response to level A releases  
6 in a region of this state designated by the division. The division shall contract with  
7 at least one regional emergency response team in each area designated under s.  
8 323.13 (2) (a). The division may only contract with a local agency under this  
9 subsection. A member of a regional emergency response team shall meet the highest  
10 standards for a hazardous materials responder in 29 CFR 1910.120 (q) (6) (iv) and  
11 National Fire Protection Association standards NFPA 471 and 472. Regional  
12 emergency response teams shall have at least one member that is trained in each of  
13 the appropriate specialty areas under National Fire Protection Association standard  
14 NFPA 472. Payments to regional emergency response teams under this subsection  
15 shall be made from the appropriation account under s. 20.465 (3) (dd).

16           **(3)** The division shall reimburse a regional emergency response team for costs  
17 incurred by the team in responding to an emergency involving a level A release, or  
18 a potential level A release, if the team followed the procedures in the rules  
19 promulgated under sub. (7) (b) to determine if an emergency requiring a response  
20 existed. Reimbursement under this subsection is limited to amounts collected under  
21 sub. (4) and the amounts appropriated under s. 20.465 (3) (dr). Reimbursement is  
22 available under s. 20.465 (3) (dr) only if the regional emergency response team has  
23 made a good faith effort to identify the person responsible under sub. (4) and that  
24 person cannot be identified, or, if that person is identified, the team has received  
25 reimbursement from that person to the extent that the person is financially able or

1 has determined that the person does not have adequate money or other resources to  
2 reimburse the regional emergency response team.

3 **(4)** A person shall reimburse the division for costs incurred by a regional  
4 emergency response team in responding to an emergency if the team followed the  
5 procedures established under sub. (7) (b) to determine if an emergency requiring the  
6 team's response existed and if any of the following conditions applies:

7 (a) The person possessed or controlled a hazardous substance that was involved  
8 in the emergency.

9 (b) The person caused the emergency.

10 **(5)** A member of a regional emergency response team who is acting under a  
11 contract under sub. (2) is an employee of the state for purposes of worker's  
12 compensation benefits.

13 **(6)** The division shall notify the joint committee on finance in writing, before  
14 entering into a new contractual agreement under sub. (2) or renewing or extending  
15 a contractual agreement under sub. (2), of the specific funding commitment involved  
16 in that proposed new, renewed or extended contract. The division shall include in  
17 that notification information regarding any anticipated contractual provisions that  
18 involve state fiscal commitments for each fiscal year in the proposed new, renewed  
19 or extended contract. The division may enter into a new contractual agreement or  
20 renew or extend a contractual agreement, as proposed in the notification to the joint  
21 committee on finance, if within 14 working days after notification the committee does  
22 not schedule a meeting to review the division's proposed action. If, within 14 working  
23 days after notification to the joint committee on finance, the committee notifies the  
24 division that the committee has scheduled a meeting to review the division's

1 proposed action, the division may enter into the proposed new contract or renew or  
2 extend the contract as proposed only if the committee approves that action.

3 (7) (a) The division shall promulgate rules establishing standards to determine  
4 all of the following:

5 1. If a regional or local emergency response team has made a good faith effort  
6 to identify a person responsible for the emergency involving a release or potential  
7 release of a hazardous substance under s. 323.80 (4) or 323.81 (4).

8 2. If a person responsible for the emergency involving a release or potential  
9 release of a hazardous substance under s. 323.80 (4) or 323.81 (4) is financially able  
10 or has the money or resources necessary to reimburse a regional or local emergency  
11 response team for the expenses incurred by the regional or local emergency response  
12 team in responding to the emergency.

13 (b) The division shall promulgate rules that establish the procedures that a  
14 regional emergency response team shall follow to determine if an emergency that  
15 requires the team's response exists as the result of a level A release or a potential  
16 level A release.

17 (c) The division shall promulgate rules that establish the procedures that a  
18 local emergency response team shall follow to determine if an emergency that  
19 requires the team's response exists as the result of a release or potential release of  
20 a hazardous substance, as defined in s. 299.01 (6).

21 **323.81 Local agency response and reimbursement.** (2) A person who  
22 possesses or controls a hazardous substance that is released or who causes the  
23 release of a hazardous substance shall take the actions necessary to protect public  
24 health and safety and prevent damage to property.

1           **(3)** If action required under sub. (2) is not being adequately taken or the  
2 identity of the person responsible for an emergency involving a release or potential  
3 release of a hazardous substance is unknown and the emergency involving a release  
4 or potential release threatens public health or safety or damage to property, a local  
5 agency may take any emergency action that is consistent with the contingency plan  
6 for the undertaking of emergency actions in response to the release or potential  
7 release of hazardous substances established by the department of natural resources  
8 under s. 292.11 (5) and that it considers appropriate under the circumstances.

9           **(3m)** The division shall reimburse a local emergency response team for costs  
10 incurred by the team in responding to an emergency involving a hazardous  
11 substance release, or potential release, if the team followed the procedures in the  
12 rules promulgated under s. 323.70 (7) (b) to determine if an emergency requiring the  
13 team's response existed. Reimbursement under this subsection is limited to the  
14 amount appropriated under s. 20.465 (3) (dr). Reimbursement is available under s.  
15 20.465 (3) (dr) only if the local emergency response team has made a good faith effort  
16 to identify the person responsible under sub. (4) and that person cannot be identified,  
17 or, if that person is identified, the team has received reimbursement from that person  
18 to the extent that the person is financially able or has determined that the person  
19 does not have adequate money or other resources to reimburse the local emergency  
20 response team.

21           **(4)** (a) Except as provided in par. (b), a person shall reimburse a local agency  
22 as provided in sub. (5) for actual, reasonable, and necessary expenses incurred in  
23 responding to an emergency involving the release or potential release of a hazardous  
24 substance if any of the following conditions applies:

1           1. The person possessed or controlled a hazardous substance involved in the  
2 emergency.

3           2. The person caused the emergency.

4           (b) A local emergency response team may receive reimbursement under par. (a)  
5 only if the team followed the procedures established under s. 323.70 (7) (b) to  
6 determine if an emergency requiring the team's response existed.

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

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

13          (b) The reviewing entity shall review claims submitted under par. (am) and  
14 determine the amount of reasonable and necessary expenses incurred. The  
15 reviewing entity shall provide a person who is liable for reimbursement under sub.  
16 (4) with a notice of the amount of expenses it has determined to be reasonable and  
17 necessary that arose from the emergency involving the release or potential release  
18 of a hazardous substance and that were incurred by all local agencies from which the  
19 reviewing entity receives a claim.

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

24          (d) A person liable for reimbursement under sub. (4) shall pay the  
25 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).

## SUBCHAPTER IX

## EMERGENCY MANAGEMENT ASSISTANCE COMPACT

**323.90 Emergency management assistance compact.** The following compact, by and between the state of Wisconsin and all other states that enter into the compact, is ratified and approved:

**(1) ARTICLE I – PURPOSE AND AUTHORITIES.** (a) This compact is made and entered into by and between the participating member states that enact this compact, called “party states” in this section. In this agreement, the term “states” means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

(b) The purpose of this compact is to provide for mutual assistance among the party states in managing any emergency or disaster that is declared by the governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

(c) This compact also provides for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies if such activities occur outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the national guard mutual assistance compact or by mutual agreement among states.

1           **(2) ARTICLE II – GENERAL IMPLEMENTATION.** (a) Each party state recognizes that  
2 many emergencies transcend political jurisdictional boundaries and that  
3 intergovernmental coordination is essential in managing these and other  
4 emergencies under this compact. Each party state recognizes that there will be  
5 emergencies which require immediate access and present procedures to apply  
6 outside resources to make a prompt and effective response to such an emergency.

7           (b) The prompt, full, and effective utilization of resources of the party states,  
8 including any resources on hand or available from the federal government or any  
9 other source, that are essential to the safety, care, and welfare of the people in the  
10 event of any emergency or disaster declared by a party state, shall be the underlying  
11 principle on which subs. (1) to (12) of this compact shall be understood.

12           (c) On behalf of the governor of each party state, the legally designated state  
13 official who is assigned responsibility for emergency management will be responsible  
14 for formulation of the appropriate interstate mutual aid plans and procedures  
15 necessary to implement this compact.

16           **(3) ARTICLE III – PARTY STATE RESPONSIBILITIES.** (a) It shall be the responsibility  
17 of each party state to formulate procedural plans and programs for interstate  
18 cooperation in the performance of the responsibilities listed in this subsection. In  
19 formulating such plans, and in carrying them out, the party states, insofar as  
20 practical, shall do all of the following:

21           1. Review individual state hazards analyses and, to the extent reasonably  
22 possible, determine all those potential emergencies the party states might jointly  
23 suffer, whether due to natural disaster, technological hazard, man-made disaster,  
24 emergency aspects of resource shortages, civil disorders, insurgency, or enemy  
25 attack.



1           2. Review party states' individual emergency plans and develop a plan that will  
2 determine the mechanism for the interstate management and provision of assistance  
3 concerning any potential emergency.

4           3. Develop interstate procedures to fill any identified gaps and to resolve any  
5 identified inconsistencies or overlaps in existing or developed plans.

6           4. Assist in warning communities adjacent to or crossing the state boundaries.

7           5. Protect and assure uninterrupted delivery of services, medicines, water,  
8 food, energy and fuel, search and rescue, and critical lifeline equipment, services,  
9 and resources, both human and material.

10          6. Inventory and set procedures for the interstate loan and delivery of human  
11 and material resources, together with procedures for reimbursement or forgiveness.

12          7. Provide, to the extent authorized by law, for temporary suspension of any  
13 statutes or ordinances that restrict the implementation of the responsibilities listed  
14 in subds. 1. to 6.

15          (b) The authorized representative of a party state may request assistance of  
16 another party state by contacting the authorized representative of that state. The  
17 provisions of this agreement shall only apply to requests for assistance made by and  
18 to authorized representatives. Requests may be made by and to authorized  
19 representatives. Requests may be verbal or in writing. If verbal, the request shall  
20 be confirmed in writing within thirty days of the verbal request. Requests shall  
21 provide all of the following.

22           1. A description of the emergency service function for which assistance is  
23 needed, such as fire services, law enforcement, emergency medical, transportation,  
24 communications, public works and engineering, building inspection, planning and

1 information assistance, mass care, resource support, health and medical services,  
2 and search and rescue.

3 2. The amount and type of personnel, equipment, materials and supplies  
4 needed, and a reasonable estimate of the length of time they will be needed.

5 3. The specific place and time for staging of the assisting party's response and  
6 a point of contact at that location.

7 (c) There shall be frequent consultation among state officials who have  
8 assigned emergency management responsibilities and other appropriate  
9 representatives of the party states with affected jurisdictions and the U.S.  
10 government, with free exchange of information, plans, and resource records relating  
11 to emergency capabilities.

12 **(4) ARTICLE IV – LIMITATIONS.** Any party state requested to render mutual aid  
13 or conduct exercises and training for mutual aid shall take any action that is  
14 necessary to provide and make available the resources covered by this compact in  
15 accordance with the terms of this compact, provided that it is understood that the  
16 state rendering aid may withhold resources to the extent necessary to provide  
17 reasonable protection for that state. Each party state shall afford to the emergency  
18 forces of any party state, while operating within its state limits under the terms and  
19 conditions of this compact, the same powers, except that of arrest unless specifically  
20 authorized by the receiving state, duties, rights, and privileges as are afforded forces  
21 of the state in which it is performing emergency services. Emergency forces will  
22 continue under the command and control of their regular leaders, but the  
23 organizational units will come under the operational control of the emergency  
24 services authorities of the state receiving assistance. These conditions may be  
25 activated, as needed, only subsequent to a declaration of a state of emergency or

1 disaster by the governor of the party state that is to receive assistance or  
2 commencement of exercises or training for mutual aid and shall continue so long as  
3 the exercises or training for mutual aid are in progress, the state of emergency or  
4 disaster remains in effect, or loaned resources remain in the receiving state,  
5 whichever is longest.

6 **(5) ARTICLE V – LICENSES AND PERMITS.** Whenever any person holds a license,  
7 certificate, or other permit issued by any party state evidencing the meeting of  
8 qualifications for professional, mechanical, or other skills, and when such assistance  
9 is requested by the receiving party state, that person shall be deemed licensed,  
10 certified, or permitted by the state requesting assistance to render aid involving such  
11 skill to meet a declared emergency or disaster, subject to any limitations and  
12 conditions as the governor of the requesting state may prescribe by executive order  
13 or otherwise.

14 **(6) ARTICLE VI – LIABILITY.** Officers or employees of a party state rendering aid  
15 in another party state shall be considered agents of the requesting state for tort  
16 liability and immunity purposes, and no party state or its officers or employees  
17 rendering aid in another party state shall be liable on account of any act or omission  
18 performed in good faith on the part of those forces while so engaged or on account of  
19 the maintenance or use of any equipment or supplies in connection with the  
20 rendering of aid. “Good faith” in this subsection shall not include willful, wanton or  
21 reckless misconduct.

22 **(7) ARTICLE VII – SUPPLEMENTARY AGREEMENTS.** Inasmuch as it is probable that  
23 the pattern and detail of the machinery for mutual aid among two or more states may  
24 differ from that among the party states, this compact contains elements of a broad  
25 base common to all states, and nothing contained in this compact shall preclude any

1 state from entering into supplementary agreements with another state or affect any  
2 other agreements already in force among states. Supplementary agreements may  
3 include provisions for evacuation and reception of injured and other persons and the  
4 exchange of medical, fire, police, public utility, reconnaissance, welfare,  
5 transportation and communications personnel, and equipment and supplies.

6 **(8)** ARTICLE VIII – COMPENSATION. Each party state shall provide for the  
7 payment of compensation and death benefits to injured members of the emergency  
8 forces of that state and representatives of deceased members of those forces in case  
9 those members sustain injuries or are killed while rendering aid under this compact,  
10 in the same manner and on the same terms as if the injury or death were sustained  
11 within their own state.

12 **(9)** ARTICLE IX – REIMBURSEMENT. Except as provided in this subsection, any  
13 party state rendering aid in another state under this compact shall be reimbursed  
14 by the party state receiving the aid for any loss or damage to or expense incurred in  
15 the operation of any equipment and the provision of any service in answering a  
16 request for aid and for the costs incurred in connection with the requests. Any aiding  
17 party state may assume in whole or in part the loss, damage, expense, or other cost,  
18 or may loan equipment or donate services to the receiving party state without charge  
19 or cost. Any two or more party states may enter into supplementary agreements  
20 establishing an allocation of costs among those states. Subsection (8) expenses may  
21 not be reimbursable under this subsection.

22 **(10)** ARTICLE X – EVACUATION. Plans for the orderly evacuation and interstate  
23 reception of portions of the civilian population as the result of any emergency or  
24 disaster of sufficient proportions to so warrant, shall be worked out and maintained  
25 among the party states and the emergency management or services directors of the

1 various jurisdictions where any type of incident requiring evacuations might occur.  
2 Evacuation plans shall be put into effect by request of the state from which evacuees  
3 come and shall include the manner of transporting such evacuees, the number of  
4 evacuees to be received in different areas, the manner in which food, clothing,  
5 housing, and medical care will be provided, the registration of the evacuees, the  
6 providing of facilities for the notification of relatives or friends, the forwarding of  
7 such evacuees to other areas or the bringing in of additional materials, supplies, and  
8 all other relevant factors. Evacuation plans shall provide that the party state  
9 receiving evacuees and the party state from which the evacuees come shall mutually  
10 agree as to reimbursement of out-of-pocket expenses incurred in receiving and  
11 caring for the evacuees, for expenditures for transportation, food, clothing,  
12 medicines and medical care, and for like items. Those expenditures shall be  
13 reimbursed as agreed by the party state from which the evacuees come. After the  
14 termination of the emergency or disaster, the party state from which the evacuees  
15 came shall assume the responsibility for the ultimate support of repatriation of such  
16 evacuees.

17 **(11) ARTICLE XI – IMPLEMENTATION.** (a) This compact shall become operative  
18 immediately upon its enactment into law by any two states. After this compact  
19 becomes operative, this compact shall become effective as to any other state upon its  
20 enactment by such state.

21 (b) Any party state may withdraw from this compact by enacting a statute  
22 repealing the compact, but the withdrawal shall not take effect until thirty days after  
23 the governor of the withdrawing state has given notice in writing of the withdrawal  
24 to the governors of all other party states. Withdrawal from this compact shall not

relieve the withdrawing state from obligations assumed under the compact before the effective date of withdrawal.

(c) Authenticated copies of this compact and of any supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the U.S. government.

**(12) ARTICLE XII – ADDITIONAL PROVISIONS.** Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under 18 USC 1385.

**(END)**