

## CHAPTER 166

### EMERGENCY MANAGEMENT

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

**History:** 1979 c. 361 s. 52; 1995 a. 247.

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

**(1g)** “Adjutant general” means the adjutant general of the department of military affairs.

**(1m)** “Administrator” means the administrator of the division.

**(1p)** “Biological agent” means any of the following:

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

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

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

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

**(1r)** “Bioterrorism” means the intentional use of any biological, chemical, or radiological agent to cause death, disease or biological malfunction in a human, animal, plant, or other living organism in order to influence the policy of a governmental unit or to intimidate or coerce the civilian population.

**(1t)** “Chemical agent” means a substance that has chemical properties that produce lethal or serious effects in plants or animals.

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

**(3)** “Division” means the division of emergency management.

**(4)** “Emergency management” includes “civil defense” and means all measures undertaken by or on behalf of the state and its subdivisions:

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

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

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

**(7)** “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.

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

**History:** 1979 c. 361 ss. 54, 73; 1989 a. 31; 1995 a. 247; 2001 a. 109.

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

1. Review orders establishing or altering emergency management areas.

2. Review state emergency management plans and modifications thereof.

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

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

(b) The governor may:

1. Proclaim a state of emergency for the state or any portion of the state if he or she determines that an emergency resulting from enemy action or natural or man-made disaster exists. If the governor determines that a public health emergency exists, he or she may declare a state of emergency related to public health and may designate the department of health and family services as the lead state agency to respond to that emergency. The duration of such state of emergency shall not exceed 60 days as to emergencies resulting from enemy action or 30 days as to emergencies resulting from natural or man-made disaster, unless either is extended by joint resolution of the legislature. A copy of the proclamation shall be filed with the secretary of state. The proclamation may be revoked at the discretion of either the governor by written order or the legislature by joint resolution.

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

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

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

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

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

7. Enter into a contract with the sheriff of a county having a population of 500,000 or more for helicopter support services under sub. (2) (b) 9.

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

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

1. Subject to approval by the governor, develop and promulgate a state plan of emergency management for the security of persons and property which shall be mandatory during a state of emergency. In developing the plan, the adjutant general shall seek the advice of the department of health and family services with respect to the emergency medical aspects of the plan.

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

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

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

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

6. No later than 90 days after a state of emergency relating to public health is declared and the department of health and family services is not designated under s. 166.03 (1) (b) 1. as the lead state agency to respond to that emergency and no later than 90 days after the termination of this state of emergency relating to public health, submit to the legislature under s. 13.172 (2) and to the governor a report on all of the following:

a. The emergency powers used by the department of military affairs or its agents.

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

(b) The adjutant general may:

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

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

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

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

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

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

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

8. Make payments from the appropriation under s. 20.465 (3) (e) to pay this state’s share of grants to individuals and to provide a share of any required state share of contributions to local governments as defined in 42 USC 5122 (6) for major disaster recovery assistance. Payment of this state’s share of any contribution to a local government under this subdivision is contingent upon copayment of that share by the local government, but not to exceed 12.5% of the total eligible cost of assistance. No payment may be made under this subdivision without the prior approval of the secretary of administration.

9. Make payments from the appropriation under s. 20.465 (3) (c) to a sheriff of a county having a population of 500,000 or more for the provision of helicopter support services for boating safety, disaster assistance, drug interdiction assistance, fire fighting assistance, law enforcement assistance, search and rescue operations and traffic control operations to public safety agencies, as defined in s. 146.70 (1) (g), under a contract entered into by the governor under sub. (1) (b) 7.

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

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

(b) In counties having a county executive under s. 59.17, the county board shall designate the county executive or confirm his or her appointee as county head of emergency management services.

(c) Each county board shall designate a committee of the board as a county emergency management committee whose chairperson shall be a member of the committee designated by the chairperson of the county board. The committee, in counties having a county executive under s. 59.17, shall retain policy–making and rule–making powers in the establishment and development of county emergency management plans and programs.

(d) During the continuance of a state of emergency proclaimed by the governor the county board of each county situated within

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

**(5) POWERS AND DUTIES OF HEAD OF EMERGENCY MANAGEMENT SERVICES.** (a) The head of emergency management services in each county, town and municipality shall for his or her respective county, town or municipality, develop and promulgate emergency management plans consistent with state plans, direct the emergency management program and perform such other duties related to emergency management as are required by the governing body and the emergency management committee of the governing body when applicable.

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

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

(d) During the continuance of a state of emergency proclaimed by the governor, the head of emergency management services in each county, town and municipality, on behalf of his or her respective county, town or municipality, may contract with any person to provide equipment and services on a cost basis to be used in disaster relief.

**(5a) ROLE OF STATE AGENCY IN EMERGENCY.** Unless otherwise specified by law, the role of any state agency, including the department of military affairs and its division of emergency government, in an emergency under this chapter, is to assist local units of government and local law enforcement agencies in responding to the emergency.

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

**(7) COOPERATION.** (a) Counties, towns and municipalities may cooperate under s. 66.0301 to furnish services, combine offices and finance emergency management services.

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

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

**(8) PERSONNEL.** (a) No emergency management organization established under this section shall participate in any form of polit-

ical activity or be employed directly or indirectly for any political activity.

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

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

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

(e) Emergency management employees as defined in par. (d) shall be indemnified by their sponsor against any tort liability to third persons incurred in the performance of emergency management activities while acting in good faith and in a reasonable manner. Emergency management activities constitute a governmental function.

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

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

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

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

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

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

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

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

**History:** 1971 c. 211 s. 126; 1975 c. 147 s. 54; 1975 c. 199; 1977 c. 1; 1977 c. 397; 1979 c. 361 ss. 51, 55, 112, 113; 1981 c. 20, 211; 1983 a. 27; 1985 a. 29, 31; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 213, 251; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 247, 467; 1997 a. 27, 35, 237; 1999 a. 150 s. 672; 2001 a. 109.

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

**166.04 State traffic patrol and conservation warden duties during civil disorder.** Without proclaiming a state of emergency, the governor may, in writing filed with the secretary of state, determine that there exists a condition of civil disorder or a threat to the safety of persons on state property or damage or destruction to state property. Upon such filing, he or she may call out the state traffic patrol or the conservation warden force or members thereof for use in connection with such threat to such life or property. For the duration of such threat, as determined by the governor, such officers shall have the powers of a peace officer as set forth in s. 59.28, except that such officers shall not be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions.

**History:** 1979 c. 361 ss. 56, 112; Stats. 1979 s. 166.04; 1995 a. 201.

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

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

emergency temporary location shall remain as the seat of government until the governor establishes a new location under this section, or until the emergency is ended under s. 166.03 and the seat of government is returned to its normal location.

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

**History:** 1979 c. 361 ss. 56, 112, 113; Stats. 1979 s. 166.05; 1995 a. 247.

**166.06 Emergency temporary locations of government for counties, towns and municipalities. (1) DESIGNATION OF EMERGENCY TEMPORARY LOCATIONS.**

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

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

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

**History:** 1979 c. 361 ss. 56, 112; Stats. 1979 s. 166.06; 1995 a. 247.

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

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

**166.08 Succession to office. (1) DECLARATION OF POLICY.** Because of the possibility of enemy attack upon the United States, it is determined and declared to be necessary to assure the continuity and effective operation of the government of this state and of its political subdivisions in the event of such attack, by providing

for additional persons who can temporarily exercise the powers and discharge the duties of state and local offices.

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

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

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

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

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

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

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

(4) EMERGENCY INTERIM SUCCESSORS FOR STATE OFFICERS. (a) All state officers, subject to such regulations as the governor, or other official authorized under the constitution or this section to exercise the powers and discharge the duties of the office of governor, may issue, shall, in addition to any deputy authorized to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of emergency interim successors so that there will be not less than 3 nor more than 7 deputies or emergency interim successors or any combination of deputies or emergency interim successors, at any time.

(b) If any state officer is unavailable following an attack, and if his or her deputy, if any, is also unavailable, the powers of his or her office shall be exercised and the duties of his or her office shall be discharged by his or her designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office only until any of the following occurs:

1. Where a vacancy exists, the governor under the constitution or authority other than this section, or other official authorized under the constitution or this section to exercise the powers and discharge the duties of the office of governor, appoints a successor to fill the vacancy.

2. A successor is appointed, or elected and qualified as provided by law other than under subd. 1.

3. An officer, the officer’s deputy or a preceding named emergency interim successor becomes available to exercise, or resume the exercise of, the powers and discharge the duties of the office.

(5) ENABLING AUTHORITY FOR EMERGENCY INTERIM SUCCESSORS FOR LOCAL OFFICES. With respect to local offices for which

the governing bodies of political subdivisions may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such governing bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with this section.

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

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

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

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

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

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

**History:** 1979 c. 34; 1979 c. 361 ss. 56, 112; Stats. 1979 s. 166.08; 1983 a. 189; 1999 a. 83.

**166.09 Public shelters; immunity from civil liability.**

(1) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the state or any of its political subdivisions a license or privilege, or other-

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wise permits the state or any of its political subdivisions to inspect, designate and use the whole or any part thereof for the purpose of sheltering persons during an actual, impending, mock or practice attack shall, together with his or her successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any person on or about such real estate or premises under such license, privilege or permission or for loss or damage to the property of such person, if the owner or controller has complied with sub. (2).

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

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

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

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

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

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

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

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

**History:** 1979 c. 361 s. 57; Stats. 1979 s. 166.10; 1981 c. 350 s. 13; 1985 a. 180 ss. 24, 30m; 1987 a. 147 s. 25; 1995 a. 27.

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

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

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

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

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

(e) "Harm" means:

1. Damage to property.

2. Personal physical injury, illness or death, including mental anguish or emotional harm attendant to the personal physical injury, illness or death.

4. Economic loss.

5. Environmental pollution, as defined in s. 299.01 (4).

6. Expenses incurred by an emergency provider in preparing for and responding to a nuclear incident which are not reimbursed under s. 166.03 (1) (b) 2. or 3. or (2) (b) 7. or 292.11 (7).

(f) "Nuclear incident" means any sudden or nonsudden release of ionizing radiation, as defined under s. 254.31 (3g), from radioactive waste being stored or disposed of in a waste repository or transported. "Nuclear incident" does not include any release of radiation from radioactive waste being transported under routine operations.

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

(h) "Radioactive waste" means radioactive waste, as defined in s. 293.25 (1) (b), and radioactive defense waste.

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

(j) "Routine operations" means the operation of transportation equipment in a manner that is not subject to the requirements for immediate notice of incidents under 49 USC 1801 to 1811 or notice of discharge under s. 292.11 (2).

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

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

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

1. The defendant is any of the following:

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

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

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

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

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

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

1. The defendant is not a responsible party; or

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

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

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

**History:** 1985 a. 29; 1989 a. 31; 1989 a. 56 s. 259; 1993 a. 27; 1995 a. 227, 247; 1999 a. 9.

**166.20 Hazardous substances information and emergency planning. (1) DEFINITIONS.** In ss. 166.20 to 166.215:

(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) 1. and under 42 USC 11003.

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

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

(fm) “Hazardous material” has the meaning given in 49 USC 5102 (2).

(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).

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

1. Substances with a high degree of hazard to the skin are known or suspected to be present and skin contact is possible.
2. There are present, or there is a potential for, high atmospheric levels of substances that are harmful to the skin or capable of being absorbed through intact skin.
3. Operations at the site of the release involve a high potential for exposure to liquids or particulates that are harmful to the skin or capable of being absorbed through intact skin.
4. Response operations must be conducted in confined, poorly ventilated areas and the absence of conditions under subds. 1. to 3. has not been established.

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

1. The type and concentration of substances in the atmosphere have been identified and are dangerous to respiration but are not harmful to skin or capable of being absorbed through intact skin.
2. The atmosphere contains less than 19.5% oxygen but does not contain substances that are harmful to skin or capable of being absorbed through intact skin.
3. Vapors or gases are present that have not been completely identified but it is known that those vapors or gases are not harmful to skin or capable of being absorbed through intact skin.

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

(gm) “Petroleum marketing facility” means a facility at which petroleum products are received by tank truck, tank trailer or railroad tank car and stored for resale.

(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.

(im) “Regional emergency response team” means a team that the division contracts with under s. 166.215 (1).

(j) “Threshold quantity” means a designated quantity of:

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

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

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

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

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

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

(bg) Promulgate rules establishing an amount not to exceed \$6,000 that may be an eligible cost for computers in an emergency planning grant under s. 166.21 (2) (br).

(bm) Promulgate rules establishing standards to determine all of the following:

1. If a regional or local emergency response team has made a good faith effort to identify a person responsible for the emergency involving a release or potential release of a hazardous substance under s. 166.215 (3) or 166.22 (4).

2. If a person responsible for the emergency involving a release or potential release of a hazardous substance under s. 166.215 (3) or 166.22 (4) is financially able or has the money or resources necessary to reimburse a regional or local emergency response team for the expenses incurred by the regional or local emergency response team in responding to the emergency.

(bs) 1. Promulgate rules that establish the procedures that a regional emergency response team shall follow to determine if an emergency that requires the team’s response exists as the result of a level A release or a potential level A release.

2. Promulgate rules that establish the procedures that a local emergency response team shall follow to determine if an emergency that requires the team’s response exists as the result of a release or potential release of a hazardous substance, as defined in s. 299.01 (6).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The following facilities shall comply with the toxic chemical release form requirements under 42 USC 11023 and shall submit copies of all toxic chemical release forms to the department of natural resources:

a. All facilities subject to 42 USC 11023.

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

c. All facilities with 10 or more employees in major group classifications 10 to 13 in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget, at which a toxic chemical is used at or above an applicable threshold quantity, except that compliance with the toxic chemical release form requirements under this subd. 4. c. is not required for the placement of a toxic chemical in a storage or disposal site or facility that is located at a facility with a permit under ch. 293 if the toxic chemical consists of or is contained in merchantable by-products as defined in s. 293.01 (7), minerals as defined in s. 293.01 (8) or refuse as defined in s. 293.01 (25).

5. The reporting procedures for trade secrets under 42 USC 11042 shall apply to all facilities in this state subject to the requirements under subd. 1., 3. or 4. For the purposes of applying this subdivision to public agencies and private agencies, the division

shall have the powers and duties granted to the administrator of the U.S. environmental protection agency under 42 USC 11042.

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

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

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

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

**(7) FACILITY FEES.** (a) The division shall establish, by rule, the following fees at levels designed to fund the division's administrative expenses and the grants under s. 166.21:

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

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

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

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

(dm) The operator of a petroleum marketing facility is exempt from the fees under par. (a) 2. with respect to gasoline and diesel fuel present at the petroleum marketing facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Any person who knowingly and willfully fails to report the release of a hazardous substance covered under 42 USC 11004 as required under sub. (5) (a) 2. or any rule promulgated under sub. (5) (a) 2. is subject to the following penalties:

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

2. For the 2nd and subsequent offenses, the person is guilty of a Class I felony, except that, notwithstanding the maximum fine

specified in s. 939.50 (3) (i), the person may be fined not more than \$50,000.

(c) Any person who violates sub. (5) (a) 5. or 6. or the material safety data sheet requirements of 42 USC 11021, as applied under sub. (5) (a) 3., or any rule promulgated under sub. (5) (a) 5. or 6. or concerning material safety data sheet requirements shall forfeit not less than \$50 nor more than \$10,000.

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

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

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

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

**History:** 1987 a. 342; 1989 a. 31, 115, 359; 1991 a. 39, 104, 189; 1993 a. 240, 253; 1995 a. 13, 113, 201, 227, 247; 1997 a. 27, 283; 1999 a. 9, 185; 2001 a. 16, 109.

**Cross Reference:** See also WEM, Wis. adm. code.

State Emergency Response Board committee members are entitled to indemnity for damage liability under s. 895.46 and legal representation by the attorney general under s. 165.25. 81 Atty. Gen. 17.

The authority and responsibility of local units of government to respond to Level B hazardous substance releases is discussed. OAG 1–99.

**166.21 Emergency planning grants. (1) GENERAL.** (a) There is created an emergency planning grant program for the purpose of assisting committees to comply with the requirements of s. 166.20 and the federal act.

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

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

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

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

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

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

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

(dm) Hazardous materials response supplies.

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

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

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

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

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

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

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

(f) Procedures for local emergency response team actions that are consistent with local emergency response plans developed under s. 166.20 (3) and the state contingency plan established under s. 292.11 (5).

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

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

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

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

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

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

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

**(4) PAYMENT OF GRANTS.** Annually, the division shall review all applications received under this section and make grants to committees from the appropriations under s. 20.465 (3) (jm) and (r). If insufficient funds are available to pay all approved grants, the division shall prorate the available funds among the eligible applicants in proportion to the approved grant amounts. A prorated payment shall be deemed full payment of the grant.

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

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

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

**History:** 1987 a. 342; 1989 a. 31, 115; 1991 a. 104; 1993 a. 16; 1995 a. 13, 227; 1997 a. 27; 2001 a. 16.

**166.215 Hazardous substance emergency response.**

**(1)** Beginning July 1, 2001, the division shall contract with no more than 9 regional emergency response teams, one of which shall be located in La Crosse County. Each regional emergency response team shall assist in the emergency response to level A

releases in a region of this state designated by the division. The division shall contract with at least one regional emergency response team in each area designated under s. 166.03 (2) (b) 1. The division may only contract with a local agency, as defined in s. 166.22 (1) (c), under this subsection. A member of a regional emergency response team shall meet the standards for a hazardous materials specialist in 29 CFR 1910.120 (q) (6) (iv) and national fire protection association standards NFPA 471 and 472. Payments to regional emergency response teams under this subsection shall be made from the appropriation account under s. 20.465 (3) (dd).

**(2)** The division shall reimburse a regional emergency response team for costs incurred by the team in responding to an emergency involving a level A release, or a potential level A release, if the team followed the procedures in the rules promulgated under s. 166.20 (2) (bs) 1. to determine if an emergency requiring a response existed. Reimbursement under this subsection is limited to amounts collected under sub. (3) and the amounts appropriated under s. 20.465 (3) (dr). Reimbursement is available under s. 20.465 (3) (dr) only if the regional emergency response team has made a good faith effort to identify the person responsible under sub. (3) and that person cannot be identified, or, if that person is identified, the team has received reimbursement from that person to the extent that the person is financially able or has determined that the person does not have adequate money or other resources to reimburse the regional emergency response team.

**(3)** A person shall reimburse the division for costs incurred by a regional emergency response team in responding to an emergency if the team followed the procedures established under s. 166.20 (2) (bs) 1. to determine if an emergency requiring the team's response existed and if any of the following conditions applies:

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

(b) The person caused the emergency.

**(4)** A member of a regional emergency response team who is acting under a contract under sub. (1) is an employee of the state for purposes of worker's compensation benefits.

**(5)** The division shall notify the joint committee on finance in writing, before entering into a new contractual agreement under sub. (1) or renewing or extending a contractual agreement under sub. (1), of the specific funding commitment involved in that proposed new, renewed or extended contract. The division shall include in that notification information regarding any anticipated contractual provisions that involve state fiscal commitments for each fiscal year in the proposed new, renewed or extended contract. The division may enter into a new contractual agreement or renew or extend a contractual agreement, as proposed in the notification to the joint committee on finance, if within 14 working days after notification the committee does not schedule a meeting to review the division's proposed action. If, within 14 working days after notification to the joint committee on finance, the committee notifies the division that the committee has scheduled a meeting to review the division's proposed action, the division may enter into the proposed new contract or renew or extend the contract as proposed only if the committee approves that action.

**History:** 1991 a. 104; 1993 a. 253; 1995 a. 13; 1997 a. 27, 41; 1999 a. 9; 2001 a. 16.

**166.22 Local agency response and reimbursement.**

**(1)** In this section:

(b) "Hazardous substance" has the meaning given in s. 299.01 (6).

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

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

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

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

(3m) The division shall reimburse a local emergency response team for costs incurred by the team in responding to an emergency involving a hazardous substance release, or potential release, if the team followed the procedures in the rules promulgated under s. 166.20 (2) (bs) 2. to determine if an emergency requiring the team's response existed. Reimbursement under this subsection is limited to the amount appropriated under s. 20.465 (3) (dr). Reimbursement is available under s. 20.465 (3) (dr) only if the local emergency response team has made a good faith effort to identify the person responsible under sub. (4) and that person cannot be identified, or, if that person is identified, the team has received reimbursement from that person to the extent that the person is financially able or has determined that the person does not have adequate money or other resources to reimburse the local emergency response team.

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

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

(b) A local emergency response team may receive reimbursement under par. (a) only if the team followed the procedures established under s. 166.20 (2) (bs) 2. to determine if an emergency requiring the team's response existed.

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

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

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

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

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

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

History: 1989 a. 256; 1995 a. 13, 227, 247; 1997 a. 27; 2001 a. 16.

**166.23 Emergency powers of cities, villages and towns.** (1) Notwithstanding any other provision of law to the contrary, the governing body of any city, village or town is empowered to declare, by ordinance or resolution, an emergency existing within the city, village or town whenever conditions arise by reason of war, conflagration, flood, heavy snow storm, blizzard, catastrophe, disaster, riot or civil commotion, acts of God, and including conditions, without limitation because of enumeration, which impair transportation, food or fuel supplies, medical care, fire, health or police protection or other vital facilities of the city, village or town. The period of the emergency shall be limited by the ordinance or resolution to the time during which the emergency conditions exist or are likely to exist.

(2) The emergency power of the governing body conferred under sub. (1) includes the general authority to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, welfare and good order of the city, village or town in the emergency and includes without limitation because of enumeration the power to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from the local highways, notwithstanding any provision of chs. 341 to 349 or any other provisions of law. The governing body of the city, village or town may provide penalties for violation of any emergency ordinance or resolution not to exceed a \$100 forfeiture or, in default of payment of the forfeiture, 6 months' imprisonment for each separate offense.

(3) If, because of the emergency conditions, the governing body of the city, village or town is unable to meet with promptness, the chief executive officer or acting chief executive officer of any city, village or town shall exercise by proclamation all of the powers conferred upon the governing body under sub. (1) or (2) which within the discretion of the officer appear necessary and expedient for the purposes herein set forth. The proclamation shall be subject to ratification, alteration, modification or repeal by the governing body as soon as that body can meet, but the subsequent action taken by the governing body shall not affect the prior validity of the proclamation.

History: 1993 a. 246; 1999 a. 150 s. 369; Stats. 1999 s. 166.23.

**166.30 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:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

(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.

(2) ARTICLE II – GENERAL IMPLEMENTATION. (a) Each party state recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this

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compact. Each party state recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency.

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

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

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

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

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

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

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

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

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

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

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

1. A description of the emergency service function for which assistance is needed, such as fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

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

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

(c) There shall be frequent consultation among state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected

jurisdictions and the U.S. government, with free exchange of information, plans, and resource records relating to emergency capabilities.

**(4) ARTICLE IV – LIMITATIONS.** Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take any action that is necessary to provide and make available the resources covered by this compact in accordance with the terms of this compact, provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for that state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which it is performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longest.

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

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

**(7) ARTICLE VII – SUPPLEMENTARY AGREEMENTS.** Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the party states, this compact contains elements of a broad base common to all states, and nothing contained in this compact shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force among states. Supplementary agreements may include provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

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

**(9) ARTICLE IX – REIMBURSEMENT.** Except as provided in this subsection, any party state rendering aid in another state under this compact shall be reimbursed by the party state receiving the aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a

request for aid and for the costs incurred in connection with the requests. Any aiding party state may assume in whole or in part the loss, damage, expense, or other cost, or may loan equipment or donate services to the receiving party state without charge or cost. Any two or more party states may enter into supplementary agreements establishing an allocation of costs among those states. Subsection (8) expenses may not be reimbursable under this subsection.

**(10) ARTICLE X – EVACUATION.** Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained among the party states and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Evacuation plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Evacuation plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and for like items. Those expenditures shall be reimbursed as agreed by the party state from which the evacuees

come. After the termination of the emergency or disaster, the party state from which the evacuees came shall assume the responsibility for the ultimate support of repatriation of such evacuees.

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

(b) Any party state may withdraw from this compact by enacting a statute repealing the compact, but the withdrawal shall not take effect until thirty days after the governor of the withdrawing state has given notice in writing of the withdrawal 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.

**History:** 1999 a. 26.