



## Legislative Fiscal Bureau

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February 4, 2004

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 120: Public Health Emergencies

Senate Bill 120 was introduced by Joint Legislative Council on April 16, 2003, and referred to the Committee on Homeland Security, Veterans and Military Affairs and Government Reform. On January 7, 2004, that Committee recommended passage of SB 120, as amended by Senate Amendment 1, on a vote of 5 to 0. On January 21, 2004, the bill was referred to the Joint Committee on Finance.

### **SUMMARY OF BILL AND SENATE AMENDMENT 1**

#### **Reimbursement of Quarantine Costs**

*Current Law.* The Department of Health and Family Services (DHFS), or local officers acting on behalf of DHFS, may require isolation or quarantine of certain individuals as may be necessary. In addition, when the Governor designates DHFS as the lead state agency in response to a public health emergency, DHFS may order individuals to receive vaccinations unless the vaccination is reasonably likely to lead to serious harm to the individual or unless the individual, for reasons of religion or conscience, refuses to obtain the vaccination. DHFS may isolate or quarantine any person unwilling or unable to receive a vaccination.

Expenses for necessary medical care, food, and other articles needed for the care of the infected person are charged against the person or whoever is liable for the person's support. The county or municipality in which a person with a communicable disease resides is liable for the following expenses of the local health department: (a) expense of employing guards for a quarantine; (b) expense of maintaining quarantine and enforcing isolation of the quarantined area;

(c) expense of conducting examinations and tests for disease carriers; and (d) expense of care provided to a dependent person.

*SB 120.* The bill would require the state to reimburse local health departments under certain circumstances for all of their expenses incurred in quarantining a person outside his or her home during a declared state of emergency related to public health. The bill would create a GPR sum sufficient appropriation for DHFS to fund costs local public health departments incur to quarantine a person outside of his or her home due to a public health emergency where: (a) the quarantine costs were not reimbursed from federal funds; and (b) the Governor has designated DHFS as the lead state agency.

Similarly, the bill would modify the current GPR sum sufficient appropriation for the Department of Military Affairs (DMA) that funds disaster recovery aid so that DMA could use the appropriation to reimburse certain quarantine-related expenses that local health departments incur under certain circumstances. The DMA appropriation would be used to fund local health department costs for quarantining a person outside of his or her home due to a public health emergency where: (a) the quarantine costs were not reimbursed from federal funds; and (b) the Governor had not designated DHFS as the lead state agency under a public health emergency (in which case the costs would be reimbursed from the sum sufficient appropriation under DHFS).

*SA 1.* The amendment would enable DHFS to reimburse local health departments designated by federally recognized American Indian tribes or bands in this state, in addition to other local health departments, for expenses incurred for quarantining a person.

### **Intrastate Mutual Aid**

*Current Law.* Law enforcement agencies may enter into mutual aid agreements with other law enforcement agencies in the state. The personnel of the agency providing assistance are considered employees of the requesting agency while providing the assistance. Law enforcement agencies are also authorized to enter into mutual aid agreements with law enforcement agencies in adjacent states. The state is a party to a compact for interstate emergency management mutual aid, but not a party to a compact for intrastate emergency management mutual aid.

In addition, fire departments may operate under mutual aid agreements with other in-state fire departments, under the authority of intergovernmental cooperation agreements. Some local fire departments may also be parties to interstate fire mutual aid agreements under the authority that provides for municipal interstate cooperation agreements.

*SB 120.* Under the bill, upon the request of a county, city, village, or town, or a person acting under an incident command system, the personnel of any emergency management program, emergency medical services program, fire department, or local health department could assist the requester within the requester's jurisdiction, without regard to any other jurisdictional provision.

The entity employing the personnel acting in response to a request for assistance would be responsible for the personnel-related costs incurred in providing the assistance.

The bill would define "emergency management program," "emergency medical services program," and "local public health department" using current statutory definitions of these terms through cross-references. In addition, the bill would define "fire department" as any public organization engaged in fire fighting or a private sector employer fire company or fire department organized as a nonstock, nonprofit corporation without the input of a municipality. Finally, the bill would define "incident command system" as a functional management system established to control, direct, and manage the roles, responsibilities, and operations of all of the agencies involved in a multi-jurisdictional or multi-agency emergency response.

*SA 1.* The amendment would expand the word "agencies" in the definition of "incident command system" to include authorities designated by a participating tribe or band. The amendment would expand the definition of "local health department" to include an entity designated by a participating tribe or band as a local health department and define "tribe or band" to mean a federally recognized American Indian tribe or band in this state.

The amendment would remove the provision in the bill that would require the program or department employing the personnel acting in response to a request for assistance to be responsible for any personnel-related costs. Instead, the amendment would require payment for requested services to be made by one of the following methods: (a) if an intergovernmental cooperation agreement for the payment of such services exists, the terms of the agreement would be followed, unless (b) applies; (b) if the intergovernmental cooperation agreement specifies that the responding agency is responsible for any personnel or equipment costs incurred in responding to a request for assistance and if a state plan of emergency management is in effect and the request for assistance is made under the state plan, the governmental unit that receives the assistance would be responsible for the personnel or equipment costs incurred by the responding agency if the responding agency meets the personnel and equipment requirements in the state plan; or (c) if no intergovernmental cooperation agreement for the payment of such services exists, the governmental unit that receives the assistance would be responsible for the personnel or equipment costs incurred by the responding agency.

### **State Emergency Operations Plan**

*Current Law.* The Adjutant General must develop a statewide emergency operations plan for the security of persons and property in Wisconsin. With respect to the emergency medical aspects of the plan, the Adjutant General must consult with DHFS. The Adjutant General must also develop standards and provide statewide training programs and exercises for the emergency response programs operated by local units of government. All local emergency response agencies must develop their emergency plans consistent with the state plan.

*Senate Bill 120.* The bill would direct the Adjutant General to include in the current state emergency operations plan the requirement that all county, city, town or village emergency

response agencies, including local health departments, use an incident command system, as defined in the bill, during a state of emergency declared by the Governor or by a local unit of government.

The bill would specify that the standards governing emergency management programs in the state require the use of the incident command system and that all emergency management plans of local emergency response agencies use such a system. The bill would also specify that the training programs prescribed by the Adjutant General include training in managing emergency operations utilizing the incident command system. The Adjutant General would be required to consult with DHFS regarding incident command system training for local health department personnel. Finally, the bill would require the Adjutant General to use federal funding for these training activities, to the extent possible.

*SA 1.* The amendment would clarify that the standards developed by the Adjutant General with respect to the use of the incident command system by emergency response agencies would have to specify: (a) equipment and personnel standards; and (b) the type of incident command system that would be used.

### **Exemption from Liability**

*Current Law.* A person who provides equipment or services during a state of emergency declared by the Governor is exempt from liability for the death of, or injury to, any person or damage to any property caused by his or her actions if the person provides the 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. These exemptions do not apply in cases where a death, injury or damage to property was caused by an intentional act or by gross negligence.

*SB 120.* The bill would extend these current law exemptions from liability for injury or death to an individual or damage to property to include persons employed by DHFS (if the Governor has proclaimed a public health emergency) or by a local health department (if acting as the designated agent of DHFS).

*SA 1.* The amendment would extend the grant of exemption from liability to include persons acting on behalf of emergency management officials of federally recognized American Indian tribes or bands in Wisconsin.

### **Public Health Council and State Health Plan**

*Current Law.* Under current law, an agency may create and appoint any advisory council or committee the agency requires for its operation. Members serve without compensation, but may be reimbursed for actual and necessary expenses they incur in performing their duties. DHFS has created the Public Health Advisory Committee, which consists of 33 members, who represent various associations and education institutions with an interest in public health. The Committee

advises the DHFS Secretary on public health matters and provides member organizations opportunities to learn about public health activities at the state level.

In addition, DHFS is required, at least once every ten years, to develop a public health agenda. DHFS published the most recent state health plan, *Healthiest Wisconsin 2010: A Partnership Plan to Improve the Health of the Public*, in July, 2002. DHFS is also required to initiate, conduct, and periodically evaluate a process for planning to use the resources of the state to meet the health needs of residents and, in conjunction with other state agencies, to implement the objectives that relate to state government in statutes or in public health rules promulgated by DHFS. DHFS must involve representatives from public health organizations, governmental agencies, and the general public in this process.

*SB 120.* The bill would create a 17-member Public Health Council in DHFS. The council's members would be nominated by the DHFS Secretary and would include representatives of: (a) health care consumers; (b) health care providers; (c) health professions educators; (d) local health departments and boards; (e) public safety agencies; and (f) the Public Health Advisory Committee, if that committee has been established by the DHFS Secretary. The council's members would serve staggered, three-year terms. However, of the 17 initial members: (a) six members would be appointed for terms that expire on July 1, 2005; (b) six members would be appointed for terms that expire on July 1, 2006; and (c) five members would be appointed for terms that expire on July 1, 2007. All of the initial members of the Council would be appointed by the first day of the fourth month beginning after the bill's effective date

The Public Health Council would be required to monitor implementation of the state health plan and advise DHFS, the Governor, the Legislature, and the public on progress in implementing the state health plan, as well as the coordination of responses to public health emergencies.

*SA 1.* The amendment would require the 17-member Council to include representatives of federally recognized American Indian tribes or bands in this state, in addition to the other representatives specified in the bill.

### **Threat to Release Chemical, Biological, or Radioactive Substances**

*Current Law.* It is a Class I felony to threaten to release chemical, biological, or radioactive substances and offenders are charged for costs incurred by state or local governments to respond to such threats. A Class I felony is punishable by a maximum term of confinement in prison of 1.5 years and a maximum term of extended supervision of 2 years and/or a fine not to exceed \$10,000.

*Senate Bill 120.* The bill would specify that any person who intentionally threatens to release or disseminate a harmful substance, knowing the threat is false, is guilty of a Class I felony, if the threat induces a reasonable expectation of fear that the person will release or disseminate a harmful substance. The bill would create the following definitions:

a. "Harmful substance" means radioactive material that is harmful to human life, a toxic chemical or its precursor, or a biological agent.

b. "Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical.

c. "Toxic chemical" means any chemical that through its chemical action on life processes can cause death, temporary incapacitation, or permanent harm to humans.

d. "Biological agent" means a microorganism or an infectious substance (or any naturally occurring, bioengineered, or synthesized toxin or component of a microorganism or an infectious substance) that is capable of causing death, disease, or other biological malfunction in humans.

e. "Microorganism" includes a bacterium, virus, fungus, rickettsia (a family of bacteria), or protozoan.

The bill would specify that if a person is found guilty of threatening to release chemical, biological, or radioactive substances, the defendant is required to pay costs to reimburse state or local government agencies for expenditures made in connection with the threat, including the following activities: (a) response to the threat by emergency medical personnel; (b) analysis of any substance alleged to be a harmful substance; and (c) medical treatment of persons who are alleged to have been exposed to an alleged harmful substance.

*SA 1.* The amendment would delete all of the provisions in the bill that would create a criminal offense for threatening to release chemical, biological, or radioactive substances and charging offenders for costs incurred by state or local governments to respond to such threats. These provisions were enacted under separate legislation (2003 Act 104), took effect on December 30, 2003, and are identified above as current law.

## **FISCAL EFFECT**

*Liability for Quarantine Costs.* The bill would transfer, from local governments to the state, the liability for the costs local health departments may incur in quarantining a person outside his or her home during a declared state of emergency related to public health in cases where these costs are not reimbursed by federal funds. Consequently, enactment of the bill could increase state costs and reduce local government costs by a corresponding amount. However, it is not possible to predict these costs, which would depend on the amount of federal funds available for that purpose, the nature of the emergency, the extent of the emergency, the number of local public health departments involved, the duration of the emergency, and other factors.

Base level funding under the DMA disaster recovery aid appropriation is \$1,347,000 GPR annually. The appropriation funds the required state share of federal grants to individuals and to

local governments for recovery from major disasters. To the extent that there were few or no federally declared natural disasters within a fiscal year that required a state match, these funds would be available to support any qualifying reimbursements for quarantine costs. To the extent that natural disaster aid payments and any quarantine cost reimbursements exceeded current base level funding, the full amount of the qualifying additional costs would be funded from the sum sufficient appropriation.

*Public Health Council.* The bill would create a 17-member Public Health Council. DHFS estimates that if the council were to meet twice each year, travel and per diem expenses for the council members would total \$600 GPR annually. DHFS could absorb these expenses.

*Incident Command System Training.* The bill would require DMA to provide local emergency response personnel with training on the use of an incident command system. The bill would require the Adjutant General to use federal funding for this purpose, to the extent possible. The state's current expenditure proposal for the 2003 State Homeland Security Program federal grant contains a training program allocation of \$556,000 FED. Presumably, these funds would also be available to support training activities related to the use of an incident command system.

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