



WISCONSIN LEGISLATIVE COUNCIL

SPECIAL COMMITTEE ON EMERGENCY MANAGEMENT & CONTINUITY OF GOVERNMENT

Legislative Council Conference Room
Madison, WI

December 18, 2008
10:00 a.m. – 1:25 p.m.

[The following is a summary of the December 18, 2008 meeting of the Special Committee on Emergency Management and Continuity of Government. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Vice-Chair Ballweg called the meeting to order. She noted that Mr. Holton is now officially a member of the committee. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Senator Robert Jauch, Chair; Representative Joan Ballweg, Vice Chair; Representatives Samantha Kerkman and Marlin Schneider; and Public Members Gary Dalton, Dr. Azita Hamedani, Ken Hartje, Douglas Holton, Keith Kesler, Robert Ritger, Dean Roland, and Johnnie Smith.

COUNCIL STAFF PRESENT: Pam Shannon and Dick Sweet, Senior Staff Attorneys.

Approval of the Minutes of the November 12, 2008 Meeting

Representative Schneider moved, seconded by Mr. Dalton, to approve the minutes of the November 12, 2008 meeting. The motion passed on a unanimous voice vote.

**Report on the Status of the Subcommittee on Recodification
of Ch. 166 and Related Emergency Management Statutes
and the Work Group on Liability of Volunteers**

Representative Ballweg noted that the committee was e-mailed a copy of the recodification draft and a version showing how the new emergency management chapter (ch. 323, Stats.) would read if that draft were adopted. Mr. Sweet explained that the draft does not yet include language on liability or immunity of volunteers, nor the provisions on legislative continuity approved by the committee at the last meeting. He noted that some current statutes provide state agent status for volunteers, while others provide immunity.

Representative Ballweg asked for comments or questions on the recodification draft. Mr. Kesler noted that the draft requires use of the Mutual Aid Box Alarm System (MABAS), which he does not support. Ms. Shannon noted that the MABAS language is in current law and was not modified in the draft. Mr. Ritger suggested modifying the current language to provide that MABAS “or a similar mutual aid program” could be used and said he does not want to eliminate MABAS. Mr. Holton noted that if a jurisdiction is part of a box alarm system but lacks the resources to respond, it is not required to do so.

Presentation by Invited Speaker

Brian Litza, Chief, Emergency Medical Services Section, Department of Health Services

Mr. Litza provided an overview of the emergency medical services (EMS) system in Wisconsin. (Mr. Litza subsequently provided written testimony which is posted on the committee’s Web site.) He noted that the EMS section in the Department of Health Services (DHS) regulates ambulance services, individual providers, EMS training centers, and the trauma care system, and follows national trends in maintaining five levels of EMS providers. He noted that standards of care change with changing medical technology. He distributed a chart showing the five levels of providers and their corresponding national and Wisconsin training hour requirements. He said that the minimum hours are set forth in administrative rules and that only for EMT-basic, both a minimum and a maximum (110-140 hours) are set, and that training centers may extend the hours based on local needs.

Dr. Hamedani asked why fire departments, as in Madison, respond to emergency calls and what level of training the firefighters have. Mr. Litza said the fire department responds first in Madison because it is a 24-hour service paid for by the community. Mr. Holton said that Wisconsin is ahead of many states in the amount of training required, which he believes should be retained, but that increased use of distance learning should be explored, as well as giving departments or individuals credit for their experience in delivering particular levels of service.

Mr. Litza noted that one of the technical colleges is piloting course completion through distance learning, and that giving credit for experience is being explored. Mr. Ritger said the number of patient contacts is more important than the number of years of practice.

Representative Kerkman noted that her district is both rural and urban, with lengthy response times in rural areas. She said that there is concern about the perceived elimination of the intermediate EMT level. Mr. Litza said the intermediate level will still exist but with elimination of the national

exam, the question is whether to retain the state exam. He said there will also be consideration given to credit for experience. Mr. Roland noted that he has lost many volunteers who have been decertified because they could not meet the training requirements. Dr. Hamedani suggested looking into the feasibility of utilizing retired medical personnel as emergency responders.

Chair Jauch suggested that Mr. Litza have discussions with the technical colleges about the concerns raised today and report back to the committee on those discussions with suggestions to address issues relating to training.

Discussion of Draft Legislation

The committee first discussed three drafts requested by the Department of Agriculture, Trade, and Consumer Protection (DATCP).

WLC: 0376/1, relating to the pest control compact deals

Mr. Sweet explained that the compact was ratified in the 1960s and under the legislation, all neighboring states were required to ratify the compact, in order for Wisconsin's ratification to take effect. Iowa has not done so, and Wisconsin has been unable to participate in the compact. Brian Kuhn from DATCP explained the importance of the compact and said that there would be a one-time assessment to join the compact, which will cost about \$19,000 spread over six years.

Representative Schneider moved, seconded by Representative Kerkman, to approve the draft. The motion passed on a unanimous voice vote.

WLC: 0373/1, relating to the plant industry and providing penalties

Mr. Sweet said that this draft provides a civil forfeiture option in addition to the current criminal penalties for violations of ch. 94, relating to the plant industry, and gives DATCP the authority to seek an injunction restraining a person from violating ch. 94 or a related rule. Mr. Kuhn noted that the nursery industry generally favors inclusion of civil forfeitures in this area.

Representative Schneider moved, seconded, by Representative Kerkman, to approve the draft. The motion passed on a unanimous voice vote.

WLC: 0374/1, relating to the transportation and disposal of animal carcasses and granting rule-making authority

Mr. Sweet said that the draft repeals current law on the transportation and disposal of animal carcasses and replaces it with a provision that, among other things, prohibits transportation or disposal of a carcass known to be diseased or disposal of a carcass in state waters. Dr. Robert Ehlenfeldt, State Veterinarian, DATCP, noted that the current provisions are outdated and only allow for burial at six feet depth or burning, not newer means of carcass disposal. He said it is not the draft's intent to cover removal of dead deer on the road, but rather just domestic animals.

Representative Kerkman moved, seconded by Representative Schneider, to approve the draft. The motion passed on a unanimous voice vote.

WLC: 0351/1, relating to public works mutual assistance

Ms. Shannon explained that under current law, the adjutant general must develop standards for local emergency management programs that must include use of the incident command system and, for fire, rescue, and EMS service, include adoption of MABAS. She noted the draft requires the standards established for public works to include a suggestion that local governments adopt the mutual assistance agreement created by Wisconsin Emergency Management (WEM) for intergovernmental collaboration of public works personnel, equipment, and resources in an emergency. The draft also requires the adjutant general to consult with public works associations and organizations regarding the content of the agreement.

Randi Milsap, Legal Counsel, Department of Military Affairs, noted that the public works community solicited this draft and that the same legislation was passed by the Assembly earlier this session, but did not pass the Senate. Jim Hessling, Director of Public Works in Cottage Grove, said that this draft would provide additional assistance to communities in an emergency. Representative Kerkman noted that she met with public works officials who are concerned that this legislation would preclude participation by water and wastewater agencies in the WISWARN program. Ms. Milsap said that this draft does not preclude WISWARN from acting in this area, noting that some of the WISWARN agreements preclude participation in this program, but not the reverse.

Mr. Ritger asked what the definition of public works is and Ms. Shannon explained the definition in the draft, which Ms. Milsap noted comes from the American Public Works Association. Representative Ballweg said that it would be up to the individual communities whether to participate and noted the importance of public works agencies as emergency responders.

Mr. Roland asked, on behalf of Badger State Sheriffs, about the role of sheriffs, in light of the duties placed on the adjutant general and WEM in various statutes. Ms. Milsap noted that the sheriff is a constitutional officer with both constitutional and statutory powers that are not affected by this legislation. She added that under the long-standing concept of home rule in the state, the adjutant general and WEM administrator do not take away responsibilities from sheriffs. She offered to make a home rule presentation at a Badger State Sheriffs conference.

Representative Schneider moved, seconded by Chair Jauch, to approve the draft. The motion passed on a roll call vote as follows: Ayes, 11 (Sen. Jauch; Reps. Ballweg and Schneider; and Public Members Dalton, Hamedani, Hartje, Holton, Kesler, Ritger, Roland, and Smith); and Noes, 1 (Rep. Kerkman).

WLC: 0347/1, relating to computation of school days

Mr. Sweet explained that school districts must hold school for 180 days in order to receive state aid, but that days on which school is closed by order of a local health department are counted in that total. He said that the draft also includes days on which school is closed by order of the state health department. Representative Schneider asked whether the draft goes far enough in covering circumstances in which school might be closed and by whom. Mr. Holton cited the example of Milwaukee schools being closed due to bomb threats. Following further discussion, Chair Jauch

suggested that the Department of Public Instruction be consulted and that consideration be given to broadening the circumstances covered by the draft.

WLC: 0350/1, relating to the state disaster assistance program and making an appropriation

Ms. Shannon explained several changes the draft would make to the state disaster assistance program. The draft clarifies that funds would be available both when a presidential disaster declaration is denied and when a declaration is not sought because the state or locality does not meet federal criteria. The draft extends the program to cover human-caused as well as natural disasters. It also clarifies that Indian tribes and bands may apply for program funds. Finally, it provides \$ 1 million general purpose revenue (GPR) in each year of the next biennium to fund the program. Mr. Ritger asked whether to separate the funding provision from the remainder of the provisions. Chair Jauch said he believes there is strong support for this program. The committee discussed whether responsible parties would be required to pay the costs of responding to a human-caused disaster. Ms. Shannon responded that the statute and draft do not preclude trying to recover costs from responsible parties.

Chair Jauch moved, seconded by Mr. Roland, to approve the draft. The motion passed on a unanimous voice vote.

WLC: 0375/1, relating to local levy limits and the expenditure restraint program

Mr. Sweet explained that under current law, a local government cannot raise its levy limit by more than a specified percentage, with certain exceptions. The draft creates an additional exception under which the levy limit does not apply to the amount that a political subdivision levies to pay the unreimbursed expenses related to a declared emergency. Also, under the current expenditure restraint program, certain municipalities qualify for payments from the state if their municipal budget does not exceed the prior year's budget by more than the sum of certain specified factors. In determining the budget for the current year and the previous year, certain costs are excluded. The draft creates an additional exclusion for reimbursed expenses related to a declared emergency.

Mr. Ritger suggested that the local government be able to take more time to replenish reserves that are depleted due to an emergency. Chair Jauch noted that Rick Olin, from the Legislative Fiscal Bureau, was present to answer any technical questions. Mr. Sweet suggested that Mr. Ritger's concern could be addressed by deleting "used in the previous year" on line 6 and adding to the end of line 7: "beginning in the year in which the emergency occurs or the next year." That way, the replenishment would have to start in the same year or the next year but could continue over a number of years. Chair Jauch suggested that the draft be revised for the next meeting.

Mr. Kesler asked whether local emergencies as well as governor-declared emergencies are covered and Mr. Sweet responded that they are. Chair Jauch said the provisions should pertain only to state-declared emergencies. Mr. Smith noted that a gubernatorial declaration means that state resources are redirected to assist the local governments. The committee agreed to further consider this draft at the next meeting.

Other Business

Mr. Ritger raised the issue whether certain waivers of requirements should be in place for hospitals and other facilities in emergencies such as pandemics, similar to the waivers allowed under 2005 Wisconsin Act 270 for pharmacies. Mr. Sweet said staff could prepare a draft for the next meeting and asked whether it should be limited to governor-declared emergencies. Mr. Ritger suggested using the Act 270 language. Mr. Sweet suggested that the language refer to the DHS secretary “or his or her designee.” Chair Jauch said the DHS secretary should be consulted on this issue for further discussion at the next meeting.

Next, Mr. Hartje discussed a Task Force Implementation Project report on Wisconsin Urban Search and Rescue (heavy collapse teams). He noted that the state fire chiefs are looking for ways to fund this initiative. He noted that the Madison Fire Department has decided to pull out of the group and that Madison would not be part of a regional plan if it continues not to participate. Mr. Kesler strongly urged the committee to consider funding collapse teams. Ms. Shannon said that a general figure of \$1 million was previously proposed to fund a team, but that a breakdown of program costs is needed in order to draft a proposal. Mr. Smith suggested that fire personnel meet with Madison Fire Chief Amesqua to attempt to address her concerns and bring Madison back into the program.

Representative Ballweg noted she had distributed a publication, *Open for Business*, produced by a coalition of insurance companies, that includes checklists for individuals and businesses to use to prepare for emergencies. She noted she had also received written information on mandatory evacuations in other states and an evacuation refusal waiver from another state. She noted that the means of dealing with mandatory evacuations differs from state to state.

Mr. Kesler raised the issue of differing boundaries for various types of regions in the state, including the State Patrol, emergency management, and health, and suggested that these regions be standardized. Representative Ballweg noted that this issue has been looked at in the past and it was found to be infeasible.

Mr. Smith asked about the timeline for completing the recodification of ch. 166. Representative Ballweg said that the drafting subcommittee is currently reviewing the latest draft (which was distributed to the full committee) and that committee members should pass along any comments about the draft to committee staff. She said there will be one more meeting of the full committee to consider the recodification draft and issues remaining from today’s discussion. She said that following that meeting, there could be a mail ballot on some smaller items if necessary. Mr. Sweet said the next meeting might have to be in late January or February, in order for the Legislative Reference Bureau to complete all necessary drafting.

Plans for Future Meetings

The next meeting of the Special Committee will be held at the call of the chair and will likely be held on a Monday or Friday, due to the legislative session schedule.

Adjournment

The meeting was adjourned at 1:25 p.m.

PS:ty:wu