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EMERGENCY MANAGEMENT AND THE ROLE OF THE STATE LEGISLATURE

Major events of the 21st century have served to remind Americans that national disasters are not a thing of the past. The terrorism of 9-11 and the destruction left behind by Hurricane Katrina have focused attention on homeland security and emergency preparedness at all levels of government. While 9-11 was a reminder that the nation cannot afford to disregard large-scale threats, Hurricane Katrina served as a lesson that responses to such disasters must be carefully planned and coordinated. In addition, localized disasters, such as the Watertown tire fire of July 2005, deserve attention. Questions about jurisdiction and responsibility are an important element of emergency planning. The answers evolve as different threats become the focus of emergency management and mesh with other areas such as public health, as with the H5N1 Avian Flu strain threat. This brief outlines Wisconsin's emergency management structure and discusses the role of the state legislature in creating and improving that structure.

AN EVOLVING FIELD

Emergency management's roots lie in the World War II era of military threats at home. War-caused disasters such as a nuclear attack were the focus of the federal government, while natural and other man-made disasters were the responsibility of state and local authorities. In the late 20th century, with the establishment of the Federal Emergency Management Agency (FEMA) and increased eligibility for federal funding, a more

comprehensive approach to disaster management emerged. Not only was the field expanded to include natural disasters and other non-war-caused emergencies, but the approach was more comprehensive and dealt with the many phases of a disaster. However, as emergency planning became more inclusive, and more demands were put on federal funds, federal policy shifted to re-emphasize state and local governments' ability to deal more independently with emergencies.

The emergence of catastrophic terrorism in the 1990s and current decade has again shifted the focus of federal responsibility and led to more centralized policies regarding homeland security. But there has also been an emphasis on the role of local government and the individual in preventing and planning for disasters of all kinds. With the federal government looking at problems of response by FEMA, local emergency planning may become even more important in the coming years.

THE FRAMEWORK OF RESPONSE

Disaster relief in Wisconsin is provided at various levels of government. In December 2004, Governor Jim Doyle designated the National Incident Management System (NIMS) as the basis for incident management in state government (Executive Order #81), and encouraged local and tribal governments to adopt NIMS in order to provide a consistent approach to in-state emergencies.

Local Level. State law requires the governing body of a city, village, town, or

county to “adopt an effective program of emergency management consistent with the state plan of emergency management” (Section 166.03 (4), Wisconsin Statutes.). The top elected official of a city, village, or town can request mutual aid from the county or state.

County Level. Each county board has a county emergency management committee and an emergency management program. The county board appoints its area head of emergency management, except that in counties having county executives, the county executive or his or her appointee is the head of emergency management services. The local emergency operations center is activated to respond with mutual aid to affected areas. The county may request assistance from the state. Damage assessments are submitted to Wisconsin Emergency Management (WEM) in the Department of Military Affairs. Regional directors of WEM are sent to the scene.

State. The governor has the authority to declare a State of Emergency for the state or for a portion of the state. A declaration must specify how the emergency resulted: from enemy action, natural disaster, or man-made disaster. The length of a State of Emergency cannot exceed 60 days if it results from enemy action, or 30 days if it results from a natural or man-made disaster, unless the legislature extends the period. The state Emergency Operations Center (EOC) is activated and WEM coordinates the state response with local governments. The resources of the state agencies, possibly including those of the National Guard, are made available to local governments. If the state requires assistance, the Regional Director of the Federal Emergency Management Agency (FEMA) is informed. The damage is assessed with coordination between local agencies, WEM and FEMA, and the governor can then request federal assistance. If the request for assistance is denied, the governor can appeal that decision.

Federal. If the request for assistance is approved, the President of the United States will declare that there is a disaster area. The governor signs an agreement with the federal government, and FEMA cooperates with WEM to open a field office. FEMA makes disaster assistance available in many ways. Most assistance is in the form of loans from the United States Small Business Administration (SBA), although owning a business is not prerequisite for assistance from SBA. Besides housing assistance, FEMA can also provide assistance for medical and dental expenses, funeral expenses, heating fuel, vehicle repair, clothing, moving, storage, and other disaster-related needs.

Integrated Resources. Local, state, and federal agencies are constantly working in combination to respond to emergency situations. Governmental bodies come together to create plans as well as integrate and coordinate those plans. They conduct cooperative training exercises in order to properly execute those plans.

ROLE OF THE EXECUTIVE BRANCH

Governor. In addition to the power to declare a State of Emergency and mobilize WEM in response to such an emergency, the governor has the authority to enter mutual aid contracts with other states, such as the Emergency Management Assistance Compact, enacted by law in the 1999 session (Section 166.30, Wisconsin Statutes). The governor may also declare the priority of emergency contracts over other contracts. During a public health emergency, the governor may suspend rules that would interfere with the emergency response and would increase the threat to the population.

Adjutant General. Wisconsin’s adjutant general develops the state’s emergency management plan in consultation with the

Department of Health and Family Services (DHFS). The plan is subject to approval by the governor. The adjutant general is responsible for putting that plan into action, and must establish statewide training programs to develop proficiency in emergency management.

Department of Health and Family Services. The governor may designate DHFS as the lead state agency if he or she has declared a state of emergency related to a public health emergency. A public health emergency is defined in the statutes (Section 166.02 (7), Wisconsin Statutes) and refers to the occurrence or imminent threat of widespread illness caused by bioterrorism or a biological agent. When designated the lead agency, during the period of the state of emergency, DHFS acts as the public health authority (Section 250.042 (1), Wisconsin Statutes). A public health authority has the power to purchase, store, or distribute agents such as vaccines in order to control a public health emergency. A public health authority is also responsible for informing state residents about the emergency and its related issues, and it must consult with local health departments and individual health care providers. During the state of emergency period, the secretary of DHFS may designate a local health department as an agent of DHFS and confer upon it the powers and duties of a public health authority.

Wisconsin Emergency Management (WEM) is the function of the Division of Emergency Management in the Department of Military Affairs. It is composed of two bureaus: Planning and Preparedness and Response and Recovery. There are six regional directors, headquartered in Madison, Fond du Lac, Wausau, Spooner, Waukesha, and Eau Claire. They are located in the same regional districts as those of the Wisconsin State Patrol. The regional directors support local training

activities and serve as field liaisons for the State Emergency Operations Center.

The Governor's Homeland Security Council was created in 2003 by Executive Order #7. It is a nonstatutory council whose duty is to advise the governor and coordinate the efforts of state and local agencies with regard to the prevention and response to major threats to the security of Wisconsin. The council's members are appointed by the governor and serve at the pleasure of the governor. The council must submit periodic reports and dissolve upon the governor's acceptance of the council's final report.

THE ROLE OF THE LEGISLATURE

The state legislature shapes the role and strategy of the state's response to emergencies. In addition to adopting legislation to create standards for emergency management, the legislature can also continue to assess risk factors and monitor compliance to established standards.

Individually, legislators play an important role by communicating important emergency information to their constituents. Their contact with their constituents provides an opportunity for educating the public about safety standards and emergency procedures, and helps legislators gather information to improve disaster response. This communication link became evident during the events of Hurricane Katrina in Louisiana. A Legislative Resource Center was set up to provide legislators contact with each other as well as to provide citizens with a clearinghouse of information. The Center helped to ease the "bottleneck" of information that occurred in the hurricane's aftermath and created a database of frequently requested information for future use.

According to the executive director of the National Emergency Management Association, an affiliate organization with the

Council of State Governments, the states that lead the nation in emergency management tend to be those with the most risk and regular disaster activity. These states include Florida and California. Arizona, Florida, North Dakota, Pennsylvania, Virginia, and Washington, D.C. have emergency management programs accredited by the Emergency Management Accreditation Program, a nonprofit organization whose criteria for accreditation is based on national standards developed by FEMA and other emergency organizations.

CURRENT LEGISLATION

The Wisconsin Legislature has responded to the national debate during the 2005 session. 2005 Wisconsin Act 269, which was signed by Governor Doyle in early April, creates a major disaster assistance fund, also known as the Wisconsin Disaster Relief Fund. The adjutant general has the authority to make payments from this fund to local units of government for losses due to a major catastrophe if the governor requests a presidential disaster declaration and is denied or if the disaster does not meet the requirements for federal assistance.

A major catastrophe is defined in the act as a disaster including drought, earthquake, flood, high water, high wind, hurricane, landslide, mudslide, snowstorm, or tornado that results in the governor requesting a presidential declaration of a major disaster under federal law. The local unit of government is required to contribute 30% of the amount of damages and costs resulting from the disaster. 2005 Wisconsin Act 269 puts \$3 million in the disaster fund; the money will be transferred from the petroleum inspection fund.

The original bill had bipartisan sponsorship. It was spurred by the denial of federal assistance to Wisconsin counties affected by tornadoes in the summer of 2005.

The Wisconsin Disaster Relief Fund was modeled on state law that provides flood damage aids through the Department of Transportation (Sections 20.395 (1)(fs) and 86.34, Wisconsin Statutes). Under this law, a local unit of government may adopt a petition for aid when any public highway, street, alley, or bridge not on the state highway system is damaged by flood.

2005 Wisconsin Act 198, signed by the governor in late March, makes several changes to the public health planning system. These changes may be significant as relates to a possible pandemic of avian bird flu. The act expands the reporting requirements for communicable diseases of humans and animals that apply to veterinarians, laboratories, and coroners or medical examiners to require that this information be provided to local health officers.

Act 198 also specifies a time limit of 24 hours for previously-required reporting by pharmacies and pharmacists of unusual increases in the number of prescriptions dispensed that are antibiotics; for the treatment of a disease that is relatively uncommon or may be associated with bioterrorism; or for the treatment of medical conditions specified by DHFS under administrative rules. The act allows such a report to be made to local health departments.

The act also directs DHFS to develop a public health agenda by January 1, 2010, and at least every 10 years thereafter.

CONCLUSION

As the assessment of the government's response to Hurricane Katrina continues, and the states continue to face more complex challenges with respect to emergency preparedness and homeland security, the role of local government, states, and federal authority will continually be redefined. State legislatures have an important role to play in that discussion.

FOR MORE INFORMATION

For more information see Chapter 166, Wisconsin Statutes, “Emergency Management”;

2005 Wisconsin Act 198 at: www.legis.state.wi.us/2005/data/acts/05Act198.pdf;

2005 Wisconsin Act 269 at: www.legis.state.wi.us/2005/data/acts/05Act269.pdf;

Wisconsin Homeland Security at: <http://homelandsecurity.wi.gov>;

Wisconsin Emergency Management at: <http://emergencymanagement.wi.gov>;

Federal Emergency Management Agency at: www.fema.gov;

California Governor’s Office of Emergency Services at: www.oes.ca.gov;

Florida Division of Emergency Management at: <http://floridadisaster.org/>

***NOTE ON CORRECTION**

The previous version of this brief referred to changes to the law made by Act 198 that affected quarantine and vaccination powers of DHFS. Those provisions were in the original bill (2005 Assembly Bill 881) and were removed by an amendment and they were not part of Act 198. We regret the error.