



# Local Government Emergency Powers

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

Is your municipality prepared to deal with an emergency? Recent disasters in communities across the state, like flooding and explosions, highlight the importance of being prepared to cope with local emergencies. Such situations also highlight the significant contributions of, and our dependence on, safety and emergency personnel. They also demonstrate that the public looks to local officials for guidance and reassurance in such difficult times. Thus, preparation is key and local officials should be familiar with Chapter 323 of the Wisconsin Statutes which governs emergency management, and local emergency plans.<sup>1</sup> As horror writer Stephen King penned, “There’s no harm in hoping for the best as long as you’re prepared for the worst.”<sup>2</sup>

This legal comment provides a brief overview of Chapter 323’s provisions relating to local government. The purpose of the chapter is to “prepare the state and its subdivisions to cope with emergencies resulting from a disaster, or the imminent threat of a disaster.”<sup>3</sup> “Disaster” means a “severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems.”<sup>4</sup> The statutes

state that unless otherwise specified by law, the role of any state agency is to assist local units of government and law enforcement agencies in responding to a disaster or imminent threat of disaster.<sup>5</sup>

The adjutant general of the Wisconsin department of military affairs serves as the governor’s principal assistant for directing and coordinating emergency management activities and, subject to the governor’s approval, is responsible for developing and adopting a state plan of emergency management for the security of persons and property.<sup>6</sup> The adjutant general is also responsible for prescribing and carrying out statewide training programs and exercises, and furnishing guidance to and establishing standards for local government emergency management programs.

Under state law, the governing body of each municipality must adopt an emergency management plan compatible with the state plan of emergency management and appoint a head of emergency management services.<sup>7</sup> Governing bodies are authorized to appropriate funds and levy taxes for the emergency management program.<sup>8</sup> Local units of government may cooperate under Wis. Stat. sec. 66.0301 to furnish services, combine offices, and finance emergency management programs. Local governments may also contract

for emergency management services with political subdivisions, agencies, and federally recognized American Indian tribes and bands of this state, and, upon prior approval of the adjutant general, with such entities in bordering states. A copy of each agreement shall be filed with the adjutant general within 10 days after execution of that agreement.<sup>9</sup>

Each county must also adopt an emergency management program and appoint a head of emergency management. In counties with a county executive, the county board must designate the executive or his or her appointee as the head of emergency management. The county emergency management head is responsible for assisting municipalities within the county with developing emergency management plans and coordinating plans within the county, and integrating municipal plans with the county plan.<sup>10</sup>

The head of emergency management services in each municipality is required to implement the municipality’s emergency management plans consistent with state plans, direct the emergency management program and perform such other duties related to emergency management as the governing body and any emergency management committee of the governing body requires.<sup>11</sup> The head of emergency management is also

1. 2009 Wis. Act 42 moved the emergency management provisions that were previously in Chapter 166 of the Statutes to a newly created Chapter 323.

2. Stephen King, *Different Seasons*.

3. Wis. Stat. sec. 323.01.

4. Sec. 323.02(6).

5. Sec. 323.01(2).

6. Sec. 323.13.

7. Sec. 323.14(1)(b).

8. Sec. 323.14(2)(a).

9. Sec. 323.14(2).

10. Sec. 323.14

11. Sec. 323.14(1)

responsible for directing local emergency management training programs and exercises, directly participating in emergency management programs and exercises ordered by the Wisconsin adjutant general and the county head of emergency management services, and must advise the county head of emergency management services on local emergency management programs and submit such reports to the county head as he or she requires.<sup>12</sup>

If a municipality fails to establish and maintain an operating emergency management organization, the Wisconsin department of military affairs' adjutant general can refuse to approve grants of funds or equipment to the municipality until it complies.<sup>13</sup> If the municipality fails to use funds or equipment granted in accordance with the agreement under which the grant was made, the adjutant general may refuse to make additional grants to the municipality until it has complied with the conditions of the prior grant, and may start proceedings to recover the funds and equipment not used in accordance with conditions of the grant.<sup>14</sup>

## Declarations of Emergency

Emergencies may be declared by the governor and also by local governments.

### *Declarations by Governor*

The governor may issue an executive order declaring a state of emergency for the state or any portion of the state if he or she determines that an emergency resulting from a disaster or the imminent threat of a disaster exists.<sup>15</sup>

During a state of emergency declared by the governor, the law provides as follows:

- Out-of-state businesses or out-of-state employees performing disaster relief work during the disaster period are exempt from applicable fees imposed by the state and local governments, and any applicable state or local government unit license, certificate, registration, permit or other credential or approval.<sup>16</sup>
- Any law enforcement officer legally engaged in traffic control, escort duty, or protective service may carry out the functions anywhere in 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.<sup>17</sup>
- The head of emergency management for each local unit of government, on behalf of his or her respective local unit of government, may contract with any person to provide equipment and services on a cost basis to be used to respond to a disaster, or the imminent threat of a disaster.<sup>18</sup>

### *Local Declarations of Emergency*

Wisconsin law empowers the governing body of any municipality to declare, by ordinance or resolution, an emergency existing within the city, village or town whenever conditions arise “by reason of a riot or civil commotion, a disaster, or an imminent threat of a disaster, that impairs transportation, food or fuel supplies, medical care, fire, health or police protection or other critical systems” of the municipality.<sup>19</sup> The ordinance or resolution must limit the emergency period to the time during

which the emergency conditions exist or are likely to exist.<sup>20</sup> The governing body's emergency power includes the general authority to order, by ordinance or resolution, “whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property” within the municipality in the emergency and includes “the power to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from the highways,” notwithstanding any contrary provisions of law.<sup>21</sup>

If the municipality's governing body is unable to meet with promptness because of the emergency conditions, 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 which within the officer's discretion appear necessary and expedient. The proclamation is 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 does not affect the prior validity of the proclamation.<sup>22</sup>

During a state of emergency, if it becomes “imprudent, inexpedient or impossible” to conduct the affairs of local government at the place where it is usually conducted, a municipality's governing body is authorized to meet at any place within or without the territorial limits of the municipality on the call of the presiding officer or his or her successor. The governing body must establish and designate by ordinance, resolution or other manner, alternate or substitute sites as the emergency

12. Sec. 323.15(1)(c).

13. Sec. 323.13(1)(dm).

14. *Id.*

15. Sec. 323.10

16. Sec. 323.12(5).

17. Sec. 323.16.

18. Sec. 323.15(4).

19. Sec. 323.11

20. *Id.*

21. Sec. 323.14(4).

22. Sec. 323.14(4)(b).

temporary locations of government where all, or any part, of the public business may be transacted and conducted during the emergency situation.<sup>23</sup> If practicable, they shall be the places designated as the temporary locations of government in the current emergency management plan.

While the public business is being conducted at an emergency temporary location, the governing body and other municipal officers shall have 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 municipality.<sup>24</sup>

The governing body of any municipality may enact ordinances and resolutions to provide a method by which interim appointments to public office are made during periods of emergency to fill vacancies in offices that result from enemy action. Such ordinances and resolutions must define the scope of the powers and duties that interim appointees may exercise and provide for termination of the interim appointments.<sup>25</sup> Each municipal officer for whom an interim successor is not determined by ordinance or resolution must, subject to such regulations as the municipality's executive head issues, designate by title, if feasible, or by named

person, interim successors and specify their order of succession.<sup>26</sup>

## Miscellaneous Provisions

In addition to the above provisions, Chapter 323 also contains, among other things, provisions governing reimbursement for various local government responses<sup>27</sup> as well as provisions governing liability and responsibility for workers' compensation and volunteers.<sup>28</sup>

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### About the Author:

Claire Silverman is Legal Counsel for the League of Wisconsin Municipalities. Claire joined the League staff in 1992. Contact Claire at [cms@lwm-info.org](mailto:cms@lwm-info.org)

23. Sec. 323.52.

24. Sec. 323.52

25. Sec. 323.54.

26. Sec. 323.54(2).

27. See secs. 323.42 and 323.71 (hazardous substance emergency response)

28. Secs. 323.41.



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