

EMERGENCY MANAGEMENT FUNCTIONS OF COUNTIES

—Andrew T. Phillips & Bennett J. Conard, von Briesen & Roper, s.c.

An important, though often overlooked, function of county government in Wisconsin is emergency management and the ability to declare a state of emergency. Counties are required by statute to develop and adopt an emergency management plan and program. Counties and other local governments are also granted the authority to declare emergencies in certain situations, thereby invoking a county's authority and duties prescribed under its emergency management plan. This article will provide a brief overview of county emergency planning requirements, discuss when a state of emergency may be declared, as well as a county's authority and duties during a declared state of emergency.

EMERGENCY MANAGEMENT PLANNING & PREPARATION

Each county board must develop and adopt an emergency management plan and program and designate a committee of the board as the "county emergency management committee." The plan must also be compatible with the state's emergency management plan, including incorporating the use of the "incident command system" developed by the Wisconsin Department of Administration and administered by the adjutant general. The "incident command system" is defined in statute as "a functional management system established to control, direct, and manage the roles, responsibilities, and operations of

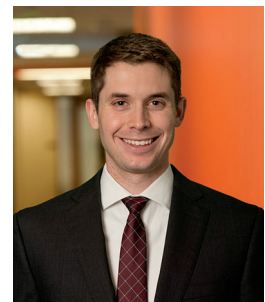
all of the agencies involved in a multi-jurisdictional or multi-agency emergency response."

Further, the county board is authorized to appropriate funds and levy taxes for its emergency management program, so it is important that each county's plan identifies the county's ongoing funding needs and appropriate reserves in the event of an emergency.

Notably, local units of government are expressly granted authority to enter into cooperative agreements with other governmental entities under Wis. Stat. § 66.0301 to "furnish services, combine offices, and finance emergency management programs." Cooperative agreements for emergency management planning and services can be particularly helpful given that emergencies often are not localized to a single political subdivision and are difficult to budget for. Sharing resources will likely lead to better response to emergency situations and ease the financial burden placed on local governments.



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continues

Legal Issues

Relating to County Government

Each county must also designate a “head of emergency management.” In counties with a county executive, the county executive (or the executive’s designee) is required to serve as the head of emergency management. However, regarding the cooperative powers noted above, a person may not serve as the head of emergency management for more than one local unit of government.

The role of the head of emergency management is to implement the plan adopted by the board, and to perform such other emergency management duties as prescribed by the board or the emergency management committee. Additionally, the head of emergency management for each county must also “coordinate and assist in developing city, village, and town emergency management plans within the county, integrate the plans with the county plan, advise the department of military affairs of all emergency management planning in the county and submit to the adjutant general the reports that 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.”

DECLARATION OF EMERGENCY

A state of emergency may be declared either by the governor or by a local government. The governor may issue an executive order declaring a state of emergency for the state or any portion of the state if the governor determines that an emergency resulting from a disaster or the imminent threat of a disaster exists.

The county board is also permitted to declare a state of emergency within the county 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 local unit of government. The declaration must be made by ordinance or resolution, and 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.

While declarations of emergencies are most typically seen in relation to extreme weather events, the term “disaster” is broadly defined and may be applied to a wide array of scenarios. Specifically, a “disaster” includes any event that is “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.”

POWERS & DUTIES DURING A DECLARED EMERGENCY

Counties are granted certain powers and duties during a declared emergency. It is important to note that these powers and duties differ depending on whether the state of emergency was declared by the governor or by the county.

When an emergency is declared by the governor, a county within the emergency area may employ personnel, facilities, and other resources consistent with the county’s emergency management plan to manage the problems that resulted in declared state of emergency. Additionally, nothing prohibits a county from employing its personnel, facilities, and

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resources consistent with its emergency management plan to manage the problems of local disasters (subject to any restrictions imposed by federal regulations on property donated by the federal government).

When a county declares a state of emergency, the county board is vested with 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 [county] in the emergency and includes the power to bar, restrict, or remove all unnecessary traffic, both vehicular and pedestrian, from the highways, notwithstanding any provision of chs. 341 to 349.” If the county board is unable to timely meet due to the emergency conditions, the county’s chief executive officer (*i.e.*, the county executive or county administrator) is authorized, by proclamation, to exercise all of the powers conferred upon the county board that “appear necessary and expedient.” Such a proclamation is subject to ratification, alteration, modification, or repeal by the county board as soon as it can meet. However, any subsequent action taken by the county board does not affect the prior validity of the proclamation.

The county’s head of emergency management is also granted certain powers and duties during a declared state of emergency. During a state of emergency declared by the governor, the head

of emergency management is granted special purchasing authority. This means that the head of emergency may contract with any person on behalf of the county to provide equipment and services on a cost basis to be used to respond to a disaster, or the imminent threat of disaster. During an emergency declared by the county, the head of emergency management is charged with implementing his or her duties prescribed by the county board under the county’s emergency management plan.

CONCLUSION

Counties have important duties and responsibilities for emergency management planning and for managing emergency situations when a state of emergency has been declared. Counties should review and update their emergency management plans every few years to make sure they are as prepared as possible, particularly with respect to their budget and appropriations process. Counties should also consider directly coordinating with other local governments (including entering into cooperative agreements) to provide emergency management services as efficiently as possible. If you have any questions about emergency management, declarations of emergency, or any other governmental law needs, please contact the Wisconsin Counties Association or any member of the von Briesen & Roper Government Law Group www.vonbriesen.com. ♦