Testimony Before the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

August 13, 2009

This testimony is being submitted jointly by the Chief Clerk and Director of Operations of the Senate and the Chief Clerk of the Assembly. Over the last 2 legislative sessions, the Chief Clerks have engaged in an effort to plan for the continuity of legislative operations. We have made substantial progress in this effort, working with the Department of Administration and each legislative service agency. However, in undertaking this planning process, we identified several legal issues that require either legislative action or constitutional changes. Senate Bill 227 and Senate Joint Resolution 39, prepared by the Legislative Council's special committee on emergency management and continuity of Government, would help address these legal issues.

The need for this legislation becomes apparent when you analyze two hypothetical scenarios.

Pandemic Influenza

> ***Hypothetical.*** There is a pandemic influenza outbreak throughout the Madison-Milwaukee corridor. Public health officials order the closing of all daycare facilities and schools, encouraging all but essential personnel to remain home. Many legislators and staff are sick and unable to travel. After one week, the pandemic has not subsided and public health officials close the City of Madison to outside visitors. Furthermore, officials issue orders prohibiting gatherings of more than 5 people. Officials estimate that the duration of the outbreak will be up to 12 weeks.

If this scenario were to occur, could Wisconsin's Legislature continue to function? Article IV, Section 11 of the Wisconsin Constitution requires the Legislature to meet at the seat of government. Section 1.09, stats., locates the seat of government on the isthmus of Madison—an area that is under quarantine. Thus, healthy members of the Legislature and legislative staff may be prohibited from entering the city. Furthermore, many will not want to travel to Madison for fear of becoming ill or due to their need to attend to ill family members. In addition, the orders issued by public health officials would ostensibly prohibit the Legislature from gathering. It is likely that neither house of the Legislature could obtain the necessary quorum required under Article IV, Section 7 of the Constitution.

The legislation before the committee today would help ensure that the Legislature could meet to address the needs of the public, even if faced with these facts. Senate Bill 227 would provide the Legislature with the option of meeting electronically—a particularly sensible option when faced with a pandemic. The bill contains important safeguards to

ensure that the public is adequately informed of the proceedings and able to follow and participate in the legislative process. In addition, the bill would allow the Legislature to meet physically at a site other than Madison, if that would be more feasible. This procedure is highly preferable to relying on the Governor's declaration of an emergency temporary seat of government. In a situation like that described in this hypothetical example, the Governor may see no particular need to facilitate legislative action. The Legislature, though, may disagree with the Governor's assessment.

Terrorist Event

> ***Hypothetical.*** All members of the Assembly and Senate are present in the Assembly chambers for the state of the state address, along with the Lieutenant Governor, State Treasurer, Secretary of State, Attorney General, and a majority of the Supreme Court. Both Chief Clerks and Sergeants are also present. Minutes after the President of the Senate convenes the joint session of the Legislature and introduces the Governor, a bomb hidden in an official state vehicle parked in the loading zone at the Southwest entrance to the Capitol explodes. The South and West wings of the Capitol are destroyed, as are most of the North and East wings, and several state office buildings surrounding the Capitol square are damaged. Radiation from the bomb spreads quickly throughout downtown Madison, affecting many individuals, businesses, and state office facilities located on Madison's isthmus. Most of the occupants of the Capitol are dead or critically injured.

If this scenario were to occur, could Wisconsin's legislature continue to function? Article IV, Section 11 of the Wisconsin Constitution requires the Legislature to meet at the seat of government. Section 1.09, stats., locates the seat of government on the isthmus of Madison, an area that is unsafe to occupy due to radiological contamination. Although current law allows the Governor to declare an emergency temporary seat of government, it may be impossible to obtain a quorum of members, much less a quorum with sufficient majority party representation, due to the number of deaths.

Furthermore, under this scenario, it is possible that the entire state government may cease to function. The Governor and the entire line of succession may be destroyed. Because of quorum issues, a mass vacancy in the Assembly and Senate may prevent the election of a legitimate new Speaker of the Assembly and Senate President. Vacancies in legislative office could be filled by special election as authorized under ss. 8.50 and 17.19 (1), stats., except that there is no Governor to call the special election as required under s. 8.50 (1), stats., and Article IV, Section 14 of the Wisconsin Constitution.

In addition, there exists no legal process by which the Governor could be replaced under this scenario. The law does not authorize a special election for the office of Governor or Lieutenant Governor. Furthermore, it is not possible to fill any of the remaining offices in the line of succession by temporary appointment under s. 17.19 (4), stats., because there is no Governor to make the appointment. Finally, it is not possible to hold a special

election for any of the remaining offices in the line of succession because s. 8.50 (1), stats., requires the Governor to call the special election.

Even assuming special elections could be held for legislative seats and other officials in the line of succession to the Governor, which is not now contemplated by Wisconsin law, this would require a minimum of approximately 9 weeks to organize and hold elections. See s. 8.50 (2) (a), stats. Meanwhile, the state would have no legitimate leadership at a time it needed it most.

Senate Bill 227 would address these important issues. By providing for an orderly line of succession to legislative office, the bill would ensure that the Legislature could relatively quickly achieve a quorum. By authorizing the Legislature to declare its own emergency seat of government, the bill would allow the Legislature to act, not only to pass necessary legislation but also to elect a Speaker and President of the Senate, thus restoring the line of succession to the office of Governor. In addition, the bill facilitates the ability of the Legislature to practice, which is a necessary element in any preparedness plan. Furthermore, Senate Joint Resolution 39, by adopting an "all hazards" approach to continuity of government, would remove the need that exists under current law to determine whether an emergency resulted from an "enemy attack." Particularly with regard to domestic terrorism, it is unclear what the term "enemy attack" means.

The ultimate goal of our planning effort is to protect Wisconsin's citizens against the incapacitation of their representative government. A legislative continuity of operations plan will ensure the survival of a functional, legitimate, Constitutional form of representational government, even under the worst of circumstances. Thank you for your attention to these important issues.

Respectfully submitted,

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Patrick Fuller, Chief Clerk, Wisconsin Assembly

REMARKS OF SENATOR BOB JAUCH, CHAIR, SPECIAL COMMITTEE ON EMERGENCY MANAGEMENT AND CONTINUITY OF GOVERNMENT

To The Committee on Small Business,

Emergency Preparedness, Technical College and Consumer Protection

August 13, 2009

Good afternoon Chair Wirch and members of the committee. Thank you for the opportunity to submit testimony to you today. During the last legislative interim period and continuing on into this year, I had the privilege of serving as chair of Legislative Council's Special Committee on Emergency Management and Continuity of Government. In addition to the four legislators who served on the committee, the committee included representatives of state, local, and private sector emergency response entities, fire departments, law enforcement, hospitals, and emergency medicine. Representative Ballweg served as Vice-Chair of the committee and her representative will also present testimony on the proposals from the Legislative Study Committee to you today.

You have before you today three bills and one joint resolution developed through the committee process: SB 226, SB 227, SB 229 and SJR 39. Each of these legislative proposals was approved unanimously by the members of the Legislative Study Committee. Many of the proposals recommended by the committee are proposals that we hope we never have to put to use, including those that deal with legislative continuity in times of disaster. However, one thing that we learned from the recent H1N1 flu outbreak is that advance preparation can mitigate the effects of a disaster and that it is therefore imperative that we be prepared to address worst case scenarios. Both Pam Shannon and Dick Sweet from Legislative Council are here today to assist in answering your questions about the proposals as necessary.

The drafts before you today do the following:

- SB 226 is the recodification of chapter 166 of the Wisconsin Statutes, which relates to emergency management. The bill moves the provisions into a new chapter of the statutes, reorganizes the chapter, and modernizes the language. Most of the modifications are technical in nature and represent important improvements to the state's system of emergency response. As I mentioned, these provisions were supported by all members of the committee, and received support from the Legislative Council Committee. Department officials are either submitting written testimony or they are here in person to answer any questions the committee may have regarding the recodification. The bill also updates the current statutes on liability for health care providers who volunteer during emergencies, by including health care providers who are not currently covered and by including certain volunteers who are credentialed in other states.
- SB 227 provides for legislative continuity during times of disaster by requiring legislators to designate emergency interim successors, allowing a house of the Legislature and its committees to conduct a virtual meeting if certain conditions are met during a time of disaster, and allowing the Legislature to provide a process for designating an emergency temporary seat of government. In addition, SJR 39 recommended by the committee amends the Wisconsin Constitution, which currently requires the Legislature to provide for succession and continuity in periods of emergency resulting from enemy attacks; the draft requires the Legislature to allow for succession and continuity in other emergency situations. Currently, the legislature cannot meet and conduct business anywhere other than the Capitol. Having a plan that provides continuity during times of disaster is a necessity. State agencies and the Governor have plans to meet and operate outside of the Capitol. It is important to recognize that there are certain situations that could result in a non-functioning legislature. The committee made a series of recommendations and we

realize some of the provisions, particularly the line of succession, will generate discussion and it is important that the legislature contemplate the options. I hope that the legislature will move at least some of this bill forward. Some aspects of the bill everyone should agree on. At the very least, it is important that we provide the legislature with the ability to meet and conduct business outside of the Capitol.

- SB 229 would create statutes that govern regional teams established to respond to structural collapse emergencies, similar to the regional teams that we currently use to address hazardous materials emergencies. The bill was brought forth by fire chiefs throughout the state. This bill will allow for a trained force that can respond and be reimbursed for these rare emergency incidences. The committee grappled with the funding aspect of this bill and we recognized that this poses a challenge in the current fiscal environment. This proposal will put the structure for the collapse teams in place and leaves the funding question open.

After the hearing on the Assembly versions of these proposals, the Assembly committee developed amendments to the bills addressing the chapter 166 recodification, structural collapse teams, and the constitutional amendment. These amendments were introduced by the Assembly committee, and Representative Ballweg and I ask that this committee introduce these amendments to the Senate versions of the bills.

- The amendment to SB 226 will require the Department of Public Instruction to promulgate rules establishing criteria for waiving the requirement to schedule at least the number of hours of direct pupil instruction specified by statute if school is closed by order of the local health officer or DHS, or is closed by order of the school district administrator because of a threat to health or

safety. This amendment also restores veterinarians under the category of "health care provider," and adds veterinary technicians to that category.

- The amendment to SB 229 the structural collapse team must make a good faith effort to identify the person responsible for the collapse and provide that information to the division. The division collects money from the responsible person and reimburses the team for costs incurred in responding to the incident. As under the bill, reimbursement is limited to the amount of money collected by the division from a responsible person.
- The amendment to SJR 39 delineates the nature of emergencies for which the Legislature must ensure continuity of governmental operations by stating that the emergencies must result from "a severe or prolonged, natural or human-caused, occurrence that threatens life, health, or the security of the state."

TESTIMONY ON SB 226, 227, 229 and SJR 39

My name is Randi Wind Milsap and I am the Legal Counsel for the WI Department of Military Affairs and its Division of Emergency Management. The Department and its Division wholeheartedly support Senate Bills 226, 227, 229 and Senate Joint Resolution 39.

These bills were prepared for the Joint Legislative Council's Special Committee on Emergency Management and Continuity of Government. I served on the drafting Sub-Committee of this Special Committee and assisted in the drafting of both SB 226 and 229. The Department and the Division wish to thank the Joint Legislative Council and its Special Committee for the tremendous work and effort put into these bills.

Senate Bill 226 is a recodification and renumbering of the current Chapter 166 (Emergency Management). This bill reflects and updates current practice in the emergency management community in a logical and orderly manner as well as modernizing language. SB 226 renumbers the current chapter to Chapter 323, creates a definition of the term "disaster" based on an all-hazards approach, encourages multi-jurisdictional collaboration between public works agencies at the city, village, town, county and tribal levels, and provides that the Governor may designate DOA as the lead

agency in the event of an emergency related to computer or telecommunications systems. The bill also modifies current law relating to liability and credentialing of emergency volunteer health care practitioners by moving the related statutes into a newly created Chapter 257 and expanding recognition of credentials to additional providers as well as persons duly credentialed in other states. This bill comes as the logical next step to the recent recodification of Chapter 21, Military Affairs as enacted under 2007 WI ACT 200.

Senate Bill 229 establishes new statutory authority for the Division of Emergency Management to enter into contracts with no more than 4 regional structural collapse teams. This bill mirrors statutory language currently in place for the regional hazardous materials emergency response teams under s. 166.215, Wis. Stats. Structural collapse teams respond to different types of catastrophic events and disasters that require different training and equipment than the regional hazardous materials teams. Under this bill, structural collapse team members will be required to meet specific training competencies and a team member acting under the contract will be considered a state employee for worker's compensation purposes. There is no fiscal note or appropriation created under this legislation. Ultimately, this bill will provide additional catastrophic response capabilities to the citizens of Wisconsin.

I appreciate the opportunity to testify in support of these important bills and welcome any specific questions the Committee members may have on this legislation.