



Legislative Fiscal Bureau

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Joint Committee on Finance

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Federal Homeland Security Funding (DOA -- Office of Justice Assistance)

[LFB 2003-05 Budget Summary: Page 43, #4]

CURRENT LAW

The Office of Justice Assistance (OJA) is attached administratively under s. 15.03 of the statutes to the Department of Administration (DOA). Currently, OJA: (a) serves as the state planning agency under the federal Juvenile Justice and Delinquency Prevention Act of 1974 and prepares a state comprehensive juvenile justice improvement plan; (b) recommends legislation relating to criminal and juvenile justice to the Governor and the Legislature; (c) provides technical assistance to state agencies, units of local government and public or private agencies relating to the criminal and juvenile justice system; (d) administers justice-related grant programs; and (e) maintains a statistical analysis center to serve as a clearinghouse of justice system data and information and conducts justice system research and data analysis.

The Adjutant General of the Department of Military Affairs (DMA) must: (a) subject to approval by the Governor, develop and promulgate a state emergency management plan for the security of persons and property; (b) prescribe and undertake statewide training programs to develop emergency management proficiency, disseminate information, serve as the principal assistant to the Governor for emergency management activities and coordinate emergency management programs between counties; (c) develop standards for emergency management programs for counties, towns and municipalities; (d) withhold grant funding from any governmental unit that does not establish and maintain an operating emergency management organization; and (e) provide assistance to the Wisconsin wing of the civil air patrol. The Adjutant General is currently the Governor's Homeland Security Advisor.

A Division of Emergency Management has been created under DMA to carry out the emergency management duties of the Adjutant General. State and local government responses to natural or man-made disasters, including the threat of chemical or biological weapons of mass

destruction, are prescribed under Chapter 166 of the statutes, which is administered by the Division.

GOVERNOR

Require OJA to apply for contracts, and receive and expend federal funds related to homeland security. Create a federal continuing appropriation under OJA for the receipt and expenditure of aid for homeland security programs.

DISCUSSION POINTS

1. In carrying out its emergency management responsibilities, DMA's Division of Emergency Management has administered two federal grant programs that fund anti-terrorism planning, training and response activities. Under the Terrorism Consequence Management Preparedness Assistance (TCMPA) Grant Program, the Division has provided grants to counties to enhance their terrorism preparedness through planning, training and exercises. Under the State Domestic Preparedness Equipment (SDPE) Grant Program, the Division has funded state and local governments to support the purchase of specialized equipment. The equipment must enhance the grantee's ability to respond to weapons of mass destruction and terrorist incidents involving the use of chemical or biological agents, radiological explosives and incendiary devices.

2. In order to qualify for SDPE federal funding, states were first required to conduct statewide needs, capabilities, threat, and vulnerability assessments to determine risks and capabilities to respond to a terrorist incident. Based on the assessments, each state had to develop a state response strategy. As a part of this exercise, 53 Wisconsin counties conducted threat and vulnerability assessments for their jurisdictions, assessed their capabilities to meet those threats and identified future equipment needs. For those counties that did not conduct a self-assessment, the Division assumed the responsibility for completing their county analysis. The Division also completed a state level assessment and forwarded the information to the Office of Justice Programs in the federal Department of Justice.

3. At the federal level, these grant programs have now been consolidated under the Department of Homeland Security and are known as the State Homeland Security Grant Program (SHSGP). Under this grant program, the federal government provides assistance to the states for: (a) the purchase of specialized equipment to enhance the capability of state and local agencies to prevent and respond to incidents of terrorism involving chemical, biological, radiological, nuclear or explosive (CBRNE) weapons; (b) the protection of critical infrastructure and prevention of terrorist incidents; (c) costs related to the design, development, conduct and evaluation of CBRNE exercises; (d) costs related to the design, development and conduct of a state CBRNE training program; and (e) costs associated with updating and implementing each state's homeland security strategy.

4. Under s. 16.54(2)(a) of the statutes, the Governor is granted the authority to designate the state agency that will administer a given set of federal funds. While DMA's Division

of Emergency Management has administered federal anti-terrorism grant funds in the past, the Governor has named OJA as the state administering agency for these grant funds. This designation is for the federal fiscal year 2003 grant award which is expected to be partially distributed in state fiscal year 2002-03.

5. OJA is an agency experienced in grant administration. OJA administers a variety of federal and state, criminal justice and law enforcement grant programs and has indicated that it could administer homeland security-related grant programs. In addition, if such programs were to be administered by OJA, the Office could provide ongoing independent review and approval of the exercise and training funding expended by the Division of Emergency Management under the grant program. While OJA was not a member of the Governor's Taskforce on Terrorism Preparedness, created in November, 2001, it currently participates in the Governor's Homeland Security Council, created in March, 2003, and is likely developing some familiarity with homeland security funding programs.

6. However, in a recent audit of OJA's administration of the Juvenile Accountability Incentive Block Grants Program (JAIBG), the Legislative Audit Bureau found "serious deficiencies in OJA's management of the program, which resulted from a noncompetitive grant award process, inadequate oversight by the 27-member Juvenile Justice Commission, and the significant discretion allowed OJA's former Executive Director." The audit was not only critical of the noncompetitive process used to distribute discretionary funds under JAIBG, but also criticized OJA's use of JAIBG funds to cover its costs of administering the program.

7. The Committee could question whether the administration of an additional, large federal grant program should be assigned to OJA at this time, until there is increased certainty that adequate grant administration controls are in place at the agency. On the other hand, the Office has indicated that it has undertaken steps to improve its JAIBG administration, including a competitive grant process for discretionary JAIBG funds beginning with the federal fiscal year 2001 award.

8. It could be argued that DMA's Division of Emergency Management would be the more appropriate agency to administer federal funds related to homeland security. The Division is the state entity that oversees the state's emergency management plan, conducts emergency planning training, has lines of communication with local emergency management agencies, and has administered the federal terrorism grant programs that would be transferred to OJA (under the bill). Accordingly, the Legislature could provide that the Adjutant General, rather than OJA, administer federal funding related to homeland security.

9. Wisconsin is expected to receive \$10,565,000 FED in grant funding under the State Homeland Security Grant Program in 2002-03. Similar amounts are also expected in both 2003-04 and 2004-05. In addition, Wisconsin is expected to receive an additional \$30 million in supplemental grant funding for formula grants for equipment, exercises and training at the beginning of state fiscal year 2003-04. Eighty percent of this formula grant funding must be distributed to local units of government.

10. Under the budget bill, a federal continuing appropriation would be created under OJA to permit the Office to receive and expend and distribute these grant funds. As a continuing appropriation, OJA would have the authority to expend and distribute all available federal revenues credited to this appropriation, subject to the DOA allotment process.

11. The budget bill does not include statutory language governing OJA's administration of the homeland security grant funds. As a result, it would be left to OJA staff to develop such procedures, including: (a) whether grant funds would be distributed on a competitive or non-competitive basis; (b) setting priority needs to be addressed with the grant funds; and (c) grant announcement, application, application review and application approval procedures. OJA staff, however, indicate that their administration of the grant program would ultimately be subject to approval by the Governor.

12. OJA staff advise that the Office has not yet had time to develop how it would administer the grant program in future years. The bulk of the initial grant funding will be distributed to meet eligible equipment needs. The federal application to receive these grant funds was submitted by April 22, 2003, and OJA will have 45 days to distribute these grant funds once they are received. Given the short timeframe to distribute the equipment grant funding under the program, OJA intends to generally apply the Division of Emergency Management formula developed under the predecessor SDPE federal grant program to make the initial round of grant equipment payments in 2002-03. OJA staff further indicate that all of the initial funds under the program for training and exercises will be distributed to the Division of Emergency Management.

13. Given the sizable amount of homeland security grant funding that the state will receive, the significance of this grant funding to Wisconsin's emergency management efforts, and the lack of specificity as to how these grant funds will be administered, it could be argued that increased legislative review regarding implementation and administration of this grant program would be appropriate.

14. Currently, s. 14.065 of the statutes provides that the Governor may not authorize the expenditure of any federal oil overcharge funds received by the state, unless a proposal for the expenditure of these funds has been approved by the Joint Committee on Finance. The Committee could consider creating a similar approval procedure for the expenditure of federal funds under the State Homeland Security Grant Program, or any successor program. Given the short timeframe that the federal government may impose for the distribution of these funds, the Committee could consider providing for a 14-day passive review process of any such expenditure proposal.

15. On the other hand, the predecessor programs to the State Homeland Security Grant Program, although more modest in funding, were not subject to this level of legislative review. As a result, it could be argued that this level of legislative oversight may not be warranted.

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) require OJA to apply for contracts, and receive and expend federal funds related to homeland security; and (b) create a federal continuing appropriation under OJA for the receipt and expenditure of aid for homeland security programs.

2. Modify the Governor's recommendation by: (a) requiring the Division of Emergency management under DMA, rather than OJA, to apply for contracts, and receive and expend federal funds related to homeland security; and (b) creating a federal continuing appropriation under DMA's emergency management services program, rather than under OJA, for the receipt and expenditure of funds for homeland security programs. Enumerate as a statutory duty of the Adjutant General, the administration of federal homeland security funds.

3. *In addition to Alternative 1 or Alternative 2*, provide that the Governor may not authorize the expenditure of any federal funds for state homeland security assistance, unless the plan for the expenditure of these funds is approved by the Joint Committee on Finance under a 14-day passive review process.

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