



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #507

Reimbursement of Certain County and Municipal Worker's Compensation And Liability Costs Due to Emergency Management Activities (Military Affairs)

[LFB 2003-05 Budget Summary: Page 302, #9]

CURRENT LAW

Under s. 166.03(8) of the statutes, county, municipal and volunteer emergency management workers are considered employees of the local emergency management agency with which they are attached. Duly registered volunteers are eligible for worker's compensation benefits, are indemnified against tort liability, and are held harmless for the costs of damaging government-owned equipment used in the performance of their duties.

The statutes also limit the total liability of the emergency management agency's sponsoring municipality or county for any of the above types of costs to not more than \$1 per capita during any calendar year, based on the sponsoring jurisdiction's population. The statutes further require the Department of Military Affairs (DMA) to reimburse the sponsoring jurisdiction for the excess costs above this \$1 per capita limit. The agency's payment is made from its emergency management services general program operations appropriation. Base level funding for this appropriation is \$688,800 GPR annually.

GOVERNOR

Modify the source of funding for reimbursements of certain worker's compensation benefits, awards for injuries to others, and losses from the destruction of equipment incurred by employees or volunteers with a county or municipality that is engaged in emergency management activities. Specify that if the total amount of such costs and liabilities exceeds in any calendar year \$1 per capita for the jurisdiction's population, the state would reimburse the

county or municipality from an existing GPR-funded sum sufficient appropriation under Program Supplements for the payment of judgments against the state and its officers, rather than from DMA's GPR-funded sum certain emergency management services general program operations appropriation. Payments from the sum sufficient appropriation would be made upon certification by the adjutant general, subject to the approval of the Attorney General, if necessary. Modify the statutory purposes of the Program Supplements sum sufficient appropriation to authorize payments for these worker's compensation benefits and the indemnification of counties and municipalities. Base level expenditures under this sum sufficient appropriation are estimated at \$46,700 GPR annually. No funding adjustments have been made to either affected appropriation as a result of these proposed modifications.

DISCUSSION POINTS

1. Funds to reimburse municipal or county jurisdictions for the excess costs of injuries, tort liability coverage or damage to government-owned equipment for employees or volunteers engaged in emergency management activities have never been budgeted under the Division of Emergency Management's general program operations appropriation.

2. The principal reason that funds have not been budgeted for these purposes is that the state has seldom been required to make payments to reimburse a county or municipality for such costs. Since 2000, only two jurisdictions have submitted reimbursement claims.

3. The first claim arose in Manitowoc County during the spring of 2000, when an emergency management volunteer suffered a serious injury during storm clean-up operations. The Division subsequently became exposed to a potentially significant worker's compensation liability.

4. As a result, DMA sought emergency supplementations at this Committee's July 12, 2000, and December 17, 2002, meetings under s. 13.10 of the statutes. Through a variety of appropriations transfers and supplementations, total funding of \$218,000 GPR was made available to the agency between 2000-01 and 2002-03 to fund the state's exposure for medical and long-term recovery costs related to this injury.

5. The second claim arose in Burnett County during the spring of 2001, when 12 registered volunteer emergency management workers sustained injuries during storm clean-up and debris removal activities. All of these injuries were minor except in one case where surgery and follow-up medical attention were required. The state's net liability exposure, once Burnett County's \$1 per capita obligation was subtracted, amounted to \$49,000 GPR in 2002-03.

6. At the Committee's December 17, 2002, meeting under s. 13.10 of the statutes, additional funding of \$49,000 GPR in 2002-03 for this liability exposure was provided to DMA through a variety of appropriations transfers and supplementations.

7. The Department argues that the unpredictable and uncontrollable nature of these types of liability costs make budgeting for them under a GPR sum certain appropriation nearly

impossible. Consequently, the agency requested, and the Governor recommended, that these types of expenditures be made from a GPR sum sufficient appropriation under Program Supplements for the payment of judgments against the state and its officers. The agency would then not have to commit any of the Division of Emergency Government's general program operations funding for these purposes or request additional supplements from this Committee. If the Committee believes that this revised funding mechanism has merit, it could approve the Governor's recommendation.

8. However, in light of the scarcity of GPR funds in the current budget cycle, the Committee may want to consider whether or not it wishes to establish a mechanism under which occasional, but potentially significant, liabilities could be charged to a sum sufficient appropriation and be paid automatically to the full extent of that liability.

9. Inasmuch as the types of events that would trigger a payment from GPR funds are quite infrequent, the Committee may conclude that it would be preferable to address each future instance on a case-by-case basis under current law procedures. Thus, if the Division of Emergency Government's general program operations appropriation would be unable to fund a future reimbursement claim, the Department would continue to have the option to request a combination of appropriations transfers and supplementations by the Committee to address this type of infrequent funding need.

10. A similar proposal to allow the agency to draw on a Program Supplements sum sufficient appropriation for these types of liability costs was proposed as part of the 2001-03 biennial budget. At that time, the Committee deleted the proposal and maintained current law procedures to fund these types of costs.

11. Whether or not the Committee chooses to modify the current funding mechanism for reimbursing counties and municipalities for worker's compensation and liability costs due to emergency management activities, it may wish to clarify current law with respect to the extent of the state's potential exposure to such costs.

12. This issue was raised at the Committee's December 17, 2002, meeting under s. 13.10 of the statutes in connection with DMA's request for additional funding for the long-term Manitowoc County injury.

13. At that time, it was noted that the relevant statutes governing the amount of the state's liability exposure [s. 166.03(8)(d) and (f) of the statutes] state that if the worker's compensation benefits for a duly enrolled emergency management volunteer "incurred in any calendar year exceeds \$1 per capita of the sponsor's population, the state shall reimburse the sponsor for the excess."

14. An opinion of the Attorney General from 1973 was cited relating to worker's compensation payments to civil defense workers above the \$1 per capita county limit [63 OAG 217]. That opinion appeared to suggest the state would not be required to make a reimbursement unless in "any calendar year" the sponsoring agent had first paid its obligation, at which time the

state would then be liable for the excess.

15. Since it was unclear whether this meant that a local jurisdiction had to make its \$1 per capita contribution in each year that costs for a long-term injury are incurred before the state becomes liable for the excess costs, \$84,727 GPR of the amounts requested (equivalent to an additional annual \$1 per capita payment by Manitowoc County) were placed in unallotted reserve. The funds are subject to release to DMA, based on the findings of a requested legal opinion by the Attorney General on the extent of the state's payment obligation under s. 166.03(8)(f) of the statutes to a county in any calendar year subsequent to the calendar year in which a registered volunteer emergency management worker is injured.

16. At this writing, DMA has not requested the opinion from the Attorney General.

17. The Committee could act at this time to clarify the extent of the state's cost exposure by adopting one or other of the following two options.

18. Under the first option, the statutes would be modified to clarify that the current law required \$1 per capita payment by a county or a municipality would be a one-time payment for injuries incurred during the calendar year by one or more registered volunteers, with the state assuming all additional costs for those injuries after the first calendar year, regardless of the duration of the injury.

19. Under the second option, the statutes would be modified to clarify that the current law required \$1 per capita payment by a county or a municipality would be made in the first calendar year and again in each successive calendar year that costs for the original eligible reimbursable injury to one or more registered volunteers continue to be incurred, with the state assuming only the additional costs above the \$1 per capital threshold in the first calendar year and in each successive calendar year.

20. If the Committee believes that the state and local units of government should cost-share for emergency-related injuries, with county and municipal exposure limited to a single \$1 per capita payment only in the first calendar year that injuries to registered volunteers occurred and with the state assuming exposure to all costs incurred thereafter, it could adopt the first option.

21. Alternatively, if the Committee believes that the state and local units of government should continue to cost-share in the first calendar year and in each succeeding calendar year that there are costs for the initial injury, it could adopt the second option.

ALTERNATIVES

1. Approve the Governor's recommendation to fund reimbursements of worker's compensation benefits, awards for injuries to others and government-owned equipment losses incurred by county or municipal employees or volunteers engaged in emergency management activities from a GPR-funded Program Supplements sum sufficient appropriation for the payment of

judgments against the state, rather than from the Division of Emergency Management's GPR-funded sum certain general program operations appropriation.

2. Delete provision.

In addition to either Alternative 1 or Alternative 2, adopt either Alternative 3 or Alternative 4:

3. Clarify s. 166.03(8)(f) of the statutes to specify that the \$1 per capita payment by a county or a municipality would be a one-time payment for injuries incurred during the calendar year by one or more registered volunteers, with the state assuming all additional costs for those continuing liabilities after the first calendar year, regardless of the duration of the injury.

4. Clarify s. 166.03(8)(f) of the statutes to specify that the \$1 per capita payment by a county or a municipality would be made in the first calendar year and in each succeeding calendar year that costs for the original reimbursable injury to one or more registered volunteers are incurred, with the state assuming only the additional costs for such continuing liabilities above the \$1 per capital threshold in the first calendar year and in each succeeding calendar year.

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