



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #426

Department of Defense Excess Property Program (DOA -- General Agency Provisions and Justice)

[LFB 2011-13 Budget Summary: Page 27, #22, and Page 274, #10]

CURRENT LAW

Section 1033 of the National Defense Authorization Act of 1997, permits the federal Department of Defense (DOD) to transfer excess military property to law enforcement agencies. A law enforcement agency is eligible to participate in the program if its primary function is the enforcement of applicable federal, state and local laws, and its compensated full-time law enforcement officers have arrest and apprehension powers. The excess property can be used for general law enforcement activities, but may not be utilized in connection with a jail. The excess equipment is available from DOD on a "where is, as is" basis. The Wisconsin Technical College System Foundation (WTCSF) administers the program on behalf of Wisconsin law enforcement agencies through an agreement with the Department of Administration's Office of Justice Assistance (OJA).

The Department of Justice (DOJ) utilizes its Division of Administrative Services gifts, grants and proceeds appropriation to receive and allocate legal settlement funds that are distributed at the discretion of the Attorney General.

GOVERNOR

Reduce expenditure authority to the GPR annual federal resource acquisition support grants appropriation under the Department of Administration (DOA) by \$10,300 GPR annually associated with a 10% budget reduction. [This would reduce available GPR funding to the WTCSF to administer the Section 1033 excess military property program to \$92,500 GPR annually.]

In addition, provide \$128,300 PR annually to a new PR annual federal resource

acquisition appropriation to provide additional funding for the Section 1033 excess military property program administered by the WTCSF. Modify the Department of Justice's (DOJ) Division of Administrative Services gifts, grants and proceeds appropriation to provide that funding must annually be transferred from the DOJ appropriation to the new DOA federal resource acquisition appropriation. The required transfer would equal the amounts provided for in the DOA federal resource acquisition appropriation. [The Executive Budget Book indicates that the intent of the provision is to transfer "discretionary legal settlement funds" to the new DOA PR annual federal resource acquisition appropriation.]

DISCUSSION POINTS

1. The Section 1033 excess military property program provides a wide variety of excess equipment to law enforcement including: (a) clothes; (b) boots; (c) blankets; (d) first aid supplies; (e) body armor and other protective equipment; (f) tools; (g) office supplies (including storage cabinets, chairs, copiers, printers, fax machines, lamps, and telephones); (h) cameras; (i) video cameras; (j) computers; (k) televisions; (l) boats; (m) cars; (n) motorcycles; (o) trucks; (p) all-terrain vehicles; and (q) weapons.

2. The following table identifies the annual budget for the Section 1033 excess military property program under the bill. The funding for this budget would include: (a) \$128,300 PR annually in transfers of discretionary settlement funds from DOJ to the new PR annual federal resource acquisition appropriation; (b) \$102,800 GPR annually; and (c) \$50,000 annually in transportation costs covered by recipient law enforcement agencies. The bill subsequently reduces available GPR funding for the program by 10% annually (a \$10,300 annual reduction). As a result, under the bill the program would be provided \$270,800 annually in funding.

Annual Budget for the Section 1033 Excess Military Property Program

<u>Item</u>	<u>Amount</u>
Staff	\$110,000
Transportation	50,000
Indirect	50,000
OJA administration	36,100
Warehouse	20,000
Services/travel*	<u>15,000</u>
Total	\$281,100

3. The administration indicates that the need for the \$128,300 PR annually in additional funding for the program under the bill is due to: (a) an effort to eliminate the \$500 annual fee for a law enforcement agency to participate in the program (the program currently receives approximately \$30,000 annually in this funding); (b) due to a change in federal rules, loss of revenue from the sale of residual excess property when equipment falls off of the federal surplus property inventory (approximately \$43,800 annually); (c) \$36,100 annually to OJA for administration costs which it indicates can no longer be covered with federal homeland security grant funding; and (d) \$18,400 annually to permit the WTCSF to no longer subsidize the costs of

administering the program.

4. Under the program, law enforcement agencies may receive excess military property on a "where is, as is" basis. If a law enforcement agency wishes to acquire a particular piece of equipment, it must be willing to pay transportation costs to move the equipment. The 2006-07 state fiscal year was the last fiscal year in which agencies were not required to pay transportation costs associated with receiving excess equipment under the program, and the last year in which they were not charged an annual \$500 fee to participate in the program. These programmatic changes led to a substantial reduction in the number of law enforcement agencies participating in the program. While in 2006-07, 312 law enforcement agencies participated in the program, in 2007-08, the number of participating law enforcement agencies decreased to 49, an 84% reduction. For the last three state fiscal years, the number of participating law enforcement agencies has held steady at 60, 60, and 61 respectively.

5. In 2009-10, the estimated fair market value of property acquired under the program totaled \$768,800, including \$239,800 in property to state law enforcement agencies and \$529,000 in property to local law enforcement agencies. By contrast, in 2009-10, the state expended \$249,600 to administer the program including \$49,700 in transportation costs paid by recipient law enforcement agencies. [These 2009-10 expenditure costs did not include OJA administration costs, as these costs were charged to federal homeland security grant funding.]

6. In order to permit state and local law enforcement agencies to continue to acquire this excess DOD property for law enforcement purposes, the Committee could consider approving the Governor's recommendation to: (a) provide \$128,300 PR annually to a new PR annual federal resource acquisition appropriation from discretionary settlement funds at DOJ; and (b) reduce expenditure authority to the GPR annual federal resource acquisition support grants appropriation by \$10,300 GPR annually. [Alternative 1] This alternative could also lead to increased participation in the program by local law enforcement agencies, as these agencies would no longer be charged a \$500 annual fee to participate in the program.

7. The Attorney General, however, has expressed concerns that the appropriation of discretionary settlement funds for the Section 1033 excess military property program and for one-time acquisition costs for the State Law Library is not legal. The Attorney General has further expressed the concern that this budget provision could jeopardize the state's receipt of specific legal settlements that would be allocated at the sole discretion of the Attorney General. In his testimony to the Committee, the Attorney General stated that:

"Funds in the discretionary settlement account arise from defendant payments made pursuant to a *court order*. Pursuant to those orders, these funds may be spent at the *sole discretion* of each signatory Attorney General as permitted by state law. By mandating use of these funds for a specific purpose, no matter how noble that purpose-and I would submit that the proposed transfers are not as essential as the core functions the Department provides-the state would jeopardize losing the funds in their entirety." (Emphasis included in original quotation.)

8. Legislative Council staff has indicated that it is unclear whether any court would have an objection if the Attorney General chose to exercise his discretion to further gubernatorial

and legislative intent as expressed in the bill provision. Second, in issuing future court orders, courts could be anticipated to take state law into account, and issue orders that conform with state law. Finally, in negotiating future settlement agreements (which could be issued as court orders in the form of consent judgments), the Attorney General could seek to ensure that the settlement terms and settlement language conform to Wisconsin law.

9. In addition to these concerns, it may be worth noting that DOJ has utilized discretionary settlement funding in recent years to address funding needs and priorities of the Department, as well as to provide funding to meet state budget lapse requirements. As a result, transfers of this funding to other agencies or branches of government may reduce the ability of the Department to address its internal funding needs and priorities.

10. As a result of the above arguments, the Committee could consider deleting the recommendation to provide \$128,300 PR annually to a new PR annual federal resource acquisition appropriation. [Alternative 5] Instead, the Committee could provide an additional \$128,300 GPR annually to the GPR annual federal resource acquisition support grants appropriation. [Alternative 2]

11. Of the 61 law enforcement agencies participating in the program during 2010-11, 58 are local law enforcement agencies. In addition, of the \$768,800 in equipment acquired under the program during 2009-10, \$529,000 was acquired by local law enforcement agencies, with the remaining \$239,800 in equipment going to state law enforcement agencies. While local law enforcement agencies are the primary beneficiaries of the program, under the bill all of the administrative costs of the program would be borne by the state (although local agencies would still be responsible for paying transportation costs). The estimated annual administrative costs that would be borne by the state would total \$220,800 annually (\$281,100 annual budget, minus a \$10,300 annual GPR budget reduction, and minus \$50,000 annually in transportation costs paid by the receiving agency).

12. If the Committee concludes that local law enforcement agencies should share in covering the administrative costs of the program, the Committee could delete \$30,000 annually in funding from the program. Under this alternative, this funding would have to continue to be raised from an annual \$500 fee on participating law enforcement agencies. If the Committee would continue to utilize discretionary settlement funds from DOJ to support the program, funding from DOJ could be reduced by \$30,000 PR annually. [Alternative 3] If the Committee elected to utilize additional GPR funding to support the program, the Committee could provide an additional \$98,300 GPR annually to the GPR annual federal resource acquisition support grants appropriation (a \$30,000 annual reduction). [Alternative 4]

13. As the program primarily benefits local law enforcement agencies, and as local units of government are responsible for equipping local law enforcement agencies, the Committee could consider deleting the recommendation to provide additional funding for the program. [Alternative 5] It is unclear, however, how the program could or would operate with the remaining base funding.

14. Finally, as the program primarily benefits local law enforcement agencies, and as local units of government are responsible for equipping local law enforcement agencies, the Committee could consider deleting the remaining base funding of \$92,500 GPR annually for the

program. [Alternative 6] Under this alternative, the administration could recommend subsequent legislation if it was felt that a narrower program to serve state agencies would be of value to the state and the affected agencies.

15. Under either of the last two alternatives, however, concerns could be raised that reducing or eliminating funding for the program could serve as an additional state reduction to local units of government who participate in the program. While local law enforcement agencies acquired \$529,000 in equipment under the program in 2009-10, during this same fiscal year law enforcement agencies paid transportation costs totaling \$49,700 and annual fees totaling \$30,000. [The difference between the equipment value and the cost figures understates the benefit of the program to local law enforcement agencies, as transportation and fee figures for 2009-10 include both state and local law enforcement agencies.] If the program was eliminated, it is unclear how or if local law enforcement agencies could organize to continue to participate in the Section 1033 excess military property program.

ALTERNATIVES

1. Approve the Governor's recommendation to reduce expenditure authority to the GPR annual federal resource acquisition support grants appropriation under the Department of Administration (DOA) by \$10,300 GPR annually associated with a 10% budget reduction.

In addition, provide \$128,300 PR annually to a new PR annual federal resource acquisition appropriation to provide additional funding for the Section 1033 excess military property program administered by the Wisconsin Technical College System Foundation (WTCSF). Modify the Department of Justice's (DOJ) Division of Administrative Services gifts, grants and proceeds appropriation to provide that funding must annually be transferred from the DOJ appropriation to the new DOA federal resource acquisition appropriation. The required transfer would equal the amounts provided for in the DOA federal resource acquisition appropriation.

2. Provide \$128,300 GPR annually to the GPR annual federal resource acquisition support grants appropriation to provide additional funding for the Section 1033 excess military property program. [*In conjunction with Alternative 5, this alternative would permit the Committee to provide GPR funding for the program in lieu of discretionary settlement funds from DOJ.*]

ALT 2	Change to Bill
	Funding
GPR	\$256,600

3. Delete \$30,000 PR annually provided to the new PR annual federal resource acquisition appropriation. [This alternative would require the WTCSF to continue to charge law enforcement agencies an annual \$500 fee to participate in the program to generate an additional \$30,000 annually in funding for the program.]

ALT 3	Change to Bill
	Funding
PR	- \$60,000

4. Provide \$98,300 GPR annually to the GPR annual federal resource acquisition support grants appropriation to provide additional funding for the Section 1033 excess military property program. *[In conjunction with Alternative 5, this alternative would permit the Committee to provide GPR funding for the program in lieu of discretionary settlement funds from DOJ. This alternative would also require the WTCSF to continue to charge law enforcement agencies an annual \$500 fee to participate in the program to generate an additional \$30,000 annually in funding for the program.]*

ALT 4	Change to Bill Funding
GPR	\$196,600

5. Delete the recommendation to provide \$128,300 PR annually to a new PR annual federal resource acquisition appropriation to provide additional funding for the Section 1033 excess military property program. In addition, delete the modification of the DOJ Division of Administrative Services gifts, grants and proceeds appropriation.

ALT 5	Change to Bill Funding
PR	- \$256,600

6. Delete the remaining base funding of \$92,500 GPR annually to the GPR annual federal resource acquisition support grants appropriation.

ALT 6	Change to Bill Funding
GPR	- \$185,000

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