



Legislative Fiscal Bureau

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April 25, 2013

Joint Committee on Finance

Paper #437

Emergency Management Volunteer Worker's Compensation Claims (Military Affairs)

[LFB 2013-15 Budget Summary: Page 303, #5]

CURRENT LAW

Under current law, an individual who registers in writing with a local unit of government's emergency management program to provide his or her labor without compensation (other than reimbursement for travel, lodging, or meals) during a disaster, an imminent threat of a disaster, or a related training exercise is considered an employee of the local unit of government for worker's compensation for purposes of any claim relating to the labor provided. The local unit of government is initially liable for any worker's compensation payments owed to any such volunteer. If in the initial calendar year, however, the worker's compensation costs incurred by the local unit of government exceed \$1 per capita of the local unit of government's population, the state must reimburse the local unit of government for the amount of worker's compensation costs that exceed this amount. If the state provides reimbursement to a local unit of government in the initial calendar year of the incident, the state must also reimburse the local unit of government for all future worker's compensation costs incurred with respect to the volunteer's worker's compensation claims.

GOVERNOR

Provide \$16,300 GPR annually as an estimate of required funding to a new GPR sum sufficient worker's compensation for local unit of government volunteers appropriation. Wisconsin Emergency Management under the Department of Military Affairs (DMA) would be authorized to utilize this appropriation to pay the worker's compensation claims of emergency management program volunteers.

Modify current law to provide that if an individual registers in writing with a local unit of

government's emergency management program to provide his or her own labor without compensation, such an individual would be considered an employee of the state for worker's compensation for purposes of any claim relating to the labor provided. If such an individual would file a worker's compensation claim relating to the individual's labor provided under these circumstances, the local unit of government would be required to refer the claim to DMA. If the claim is payable under Chapter 102 (Worker's Compensation), DMA would be required to pay the entire claim from its new GPR sum sufficient worker's compensation for local unit of government volunteers appropriation.

The creation of the new GPR sum sufficient appropriation and the programmatic changes to the emergency management volunteers program would first apply to worker's compensation claims for an injury suffered by an emergency management program volunteer on the effective date of the budget bill.

DISCUSSION POINTS

1. Under the bill, the new GPR sum sufficient appropriation could be utilized to pay the worker's compensation claims of emergency management program volunteers who suffered an injury on or after the effective date of the budget bill. However, administration staff indicates that the Governor's intent was to permit this sum sufficient appropriation to also pay claims for injuries incurred prior to the effective date of the budget bill. The estimated expenditures from the appropriation for 2013-15, is based on an estimate of amounts anticipated to be paid out for an injury sustained by a volunteer on May 13, 2000, in Manitowoc County.

2. On March 5, 2012, a Department of Workforce Development administrative law judge (ALJ) ruled that the Manitowoc County volunteer injured on May 13, 2000, was now permanently and totally disabled as a result of the 2000 incident. According to the findings of fact in the case by the ALJ:

"On May 13, 2000, applicant was cutting up a tree that had tipped over during a storm. The tree had a large exposed rootball, and the trunk was under tension. Applicant was straddling the trunk of the tree as he used a chain saw to cut off a large limb. As he completed the cut, the portion of the trunk that he was straddling suddenly sprang back up due to the weight of the rootball. Applicant was thrown through the air approximately 30 feet and landed on his low back and butt."

3. In this case, the worker's compensation costs incurred by Manitowoc County in the initial calendar year exceeded \$1 per capita of Manitowoc County's population. As a result, the state had to reimburse Manitowoc County for the amount of worker's compensation costs that exceeded this amount. As the state provided reimbursement to Manitowoc County in the initial calendar year of the incident, the state must also reimburse Manitowoc County for all future worker's compensation costs incurred with respect to the volunteer's worker's compensation claims. As a result, the state remains liable under state statute for reimbursing Manitowoc County for payment of the ongoing worker's compensation claims of the volunteer who was injured in Manitowoc County on May 13, 2000.

4. Since the onset of the Manitowoc County claim the Joint Committee on Finance has provided \$506,800 GPR to DMA to reimburse Manitowoc County for worker's compensation benefits paid to the injured volunteer. In addition, the ALJ's decision provided for monthly disability payments to the injured volunteer for life (\$1,089.70 per month), and the repayment of the volunteer's attorney (\$272.44 per month) for a period ending April 6, 2016, or for as long as the injured volunteer lives, whichever is shorter. These monthly payments are the basis for the estimate of expenditure authority from the recommended GPR sum sufficient appropriation.

5. The bill would expand the liability of the state for worker's compensation claims of injured volunteers. While under current law, the state is only liable for these claims if the worker's compensation costs incurred by the local unit of government in the initial calendar year exceed \$1 per capita of the local unit of government's population, the bill would provide that if an individual registers in writing with a local unit of government's emergency management program to provide his or her own labor without compensation, such an individual would be considered an employee of the state for worker's compensation for purposes of any claim relating to the labor provided. If the claim was payable under Chapter 102 (Worker's Compensation), instead of dividing the cost with the local unit of government, DMA would be required to pay the entire claim from its new GPR sum sufficient appropriation.

6. The administration indicates that it was not the Governor's intent to expand state liability for these claims under the budget bill. While these claims have been infrequent, the Manitowoc County case demonstrates the substantial financial exposure that can be associated with these worker's compensation cases. As a result, the Committee could elect to delete this change under the bill and maintain current law regarding the shared liability of local units of government and the state for emergency management volunteer worker's compensation claims. [Alternative 2] On the other hand, the Committee could also elect to approve this law change and adopt the recommendations in the bill. Under this alternative, the liability for these claims would shift entirely to the state. [Alternative 1]

7. The administration indicates that a GPR sum sufficient appropriation was recommended to pay these claims as: (a) the state is obligated to pay these worker's compensation claims when these claims arise; (b) the infrequent and potentially sizable nature of these claims makes it more difficult to budget for these claims on an annualized basis; and (c) even individual claims such as the Manitowoc County claim can be difficult to budget for on an annualized basis due to the unpredictable nature of the timing and size of health care costs associated with these claims. While the estimate for expenditures from the GPR sum sufficient appropriation includes monthly disability and attorneys' fees payments during 2013-15, the estimate does not include possible health care costs. According to the administration: "The payments are difficult to predict because they are not only the routine monthly payments but also any actual costs for health care."

8. As a result, the Committee could elect to approve the creation of a GPR sum sufficient appropriation to pay emergency management volunteer worker's compensation claims. [Alternative 1] In order to permit this appropriation to be utilized to pay prior claims, the Committee could also elect to amend the bill to provide that the GPR sum sufficient appropriation could be utilized to pay claims for an injury suffered by an emergency management program volunteer prior to the passage of the budget bill. [Alternative 3]

9. While actual health care costs for the injured Manitowoc County volunteer are likely to be variable, in more recent years the health care costs for this injured volunteer have come down from earlier levels. Based on average annual reimbursable health care costs incurred by this injured volunteer during calendar years 2009 thru 2012, the amounts provided under the budget bill could be increased by \$11,300 GPR annually. [Alternative 5] Whether the Committee re-estimates the GPR sum sufficient appropriation, or provides additional annual funding, this alternative would specifically budget for estimated health care costs for the injured Manitowoc County volunteer for 2013-15.

10. Current law provides that DMA pay emergency management volunteer worker's compensation claims from its emergency management services GPR annual general program operations appropriation. This appropriation provides state administrative and coordination support for state and federal emergency services provided in Wisconsin. Military Affairs staff indicates that this appropriation has never been provided base funding to pay emergency management volunteer worker's compensation claims. Department staff further indicates that it does not have base expenditure authority in this appropriation that could be utilized to address such claims. Military Affairs indicates that this appropriation is primarily utilized to pay salary and fringe benefit costs for emergency management staff and is also often utilized to match federal funding.

11. Most state agency operations appropriations are created as annual or biennial appropriations. As such, the amounts appropriated by the Legislature establish a maximum expenditure level under which an agency must operate. If increased funding is needed, an agency must seek supplemental funding under s. 13.10 of the statutes or in separate legislation. Annual and biennial appropriations provide more legislative oversight. In contrast, a sum sufficient appropriation imposes no expenditure level maximum for the purposes for which funding may be expended under the appropriation.

12. Therefore, the Committee could delete the recommendation to create a GPR sum sufficient appropriation and instead provide \$16,300 GPR annually to DMA's existing emergency management services GPR annual general program operations appropriation to pay estimated 2013-15 costs of the Manitowoc County case associated with monthly disability and attorneys' fees payments. This alternative would permit the Legislature and the administration to have more oversight as to the ongoing need and utilization of this funding to address volunteer worker's compensation claims. [Alternative 4]

13. Finally, the Committee could delete the recommendations and provide no additional funding for volunteer worker's compensation claims. [Alternative 6] Under this alternative, if DMA was not able to fund expenses from base resources to its emergency management services GPR annual general program operations appropriation, and costs under the Manitowoc County claim come in as expected or exceed current estimates, DMA would likely seek additional funding through separate legislation or under s. 13.10 of the statutes.

ALTERNATIVES

1. Approve the Governor's recommendation to provide \$16,300 GPR annually as an estimate of required funding to a new GPR sum sufficient worker's compensation for local unit of

government volunteers appropriation and further provide that this appropriation could be utilized to pay the worker's compensation claims of emergency management program volunteers. Modify current law to provide that if an individual registers in writing with a local unit of government's emergency management program to provide his or her own labor without compensation, such an individual would be considered an employee of the state for worker's compensation for purposes of any claim relating to the labor provided. Provide that the creation of the new GPR sum sufficient appropriation and the programmatic changes to the emergency management volunteers program would first apply to worker's compensation claims for an injury suffered by an emergency management program volunteer on the effective date of the budget bill.

2. Modify Alternative 1 to delete the recommendation to modify current law to provide that if an individual registers in writing with a local unit of government's emergency management program to provide his or her own labor without compensation, such an individual would be considered an employee of the state for worker's compensation for purposes of any claim relating to the labor provided. Instead, maintain current law which provides that the state only reimburses a local unit of government for worker's compensation costs incurred by a volunteer if the worker's compensation costs incurred by the local unit of government in the initial calendar year exceeded \$1 per capita of the local unit of government's population.

3. Modify Alternative 1 to provide that the new GPR sum sufficient worker's compensation for local unit of government volunteers appropriation could be utilized to pay claims for an injury suffered by an emergency management program volunteer prior to the passage of the budget bill.

4. Delete provision. Instead provide \$16,300 GPR annually to emergency management services GPR annual general program operations appropriation to address estimated 2013-15 volunteer worker's compensation claims associated with the calendar year 2000 Manitowoc County case.

5. *This alternative may be selected in addition to Alternative 1 or 4.* Provide an additional \$11,300 GPR annually as an estimate of health care costs that may be incurred by the injured Manitowoc County volunteer during 2013-15.

ALT 5	Change to Bill Funding
GPR	\$22,600

6. Delete provision.

ALT 6	Change to Bill Funding
GPR	- \$32,600

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