



Legislative Fiscal Bureau

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December 7, 2011

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Military Affairs: Section 13.10 Request to Provide Additional Funding to the State Disaster Assistance Program -- Agenda Item II

REQUEST

The Department of Military Affairs (DMA) requests a one-time transfer of \$1,000,000 SEG in expenditure authority in 2011-12, from the Joint Committee on Finance's SEG sum sufficient general program supplementation appropriation [s. 20.865(4)(u)] to DMA's SEG continuing state disaster assistance appropriation [s. 20.465(3)(s)] to provide additional funding for the state disaster assistance program. Funding would be provided from the petroleum inspection fund.

BACKGROUND

Local governmental units are generally responsible for providing the public response to damage left by storms, including the removal of debris from roadways and other public spaces, providing emergency protective measures, and repairing damage to roads and bridges. [However, the Department of Transportation (DOT) does provide flood damage aid payments from the transportation fund to local units of government when any public highway, street, alley, or bridge not on the state trunk highway system is damaged by flood.]

In the case of more substantial storms, neighboring municipalities will assist affected local governmental units to provide the required public response. If local governmental units are overwhelmed, they will turn to the state for assistance.

If both the state and local governmental units are overwhelmed by a disaster, the Federal Emergency Management Agency (FEMA) may provide assistance under the federal public assistance program. The public assistance program provides funding to state, tribal and local

governmental units for debris removal, emergency protective measures, and for repair of public infrastructure and public facilities. Prior to the creation of the state disaster assistance program, supplemental funding to offset state and local governmental costs of disasters was generally limited to the federal public assistance program.

In order to receive federal assistance following a disaster, the Governor must generally submit a request to the President seeking a major disaster declaration. According to a report for Congress prepared by the Congressional Research Service, "Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary."

In administering the federal public assistance program, the federal government has developed state and county per capita damage thresholds to assess whether or not eligible public damage from a disaster is of such severity and magnitude that effective response is beyond the capabilities of state and local governments. Generally, both the state and county per capita damage thresholds must be met in order for the federal government to provide assistance.

The provisions of 2005 Act 269 created the state disaster assistance program. The state disaster assistance program provides payments for damages and costs incurred as the result of a disaster if federal disaster assistance is not available for that disaster because either the Governor's request that the President declare the disaster a major disaster has been denied, or because the disaster, as determined by DMA, does not meet the statewide or countywide per capita damage threshold under the federal public assistance program. Under administrative rules issued by DMA, eligible costs of local units of government under the program include: (a) debris removal, to include woody debris, building wreckage, dirt, gravel, vehicles, and other disaster-related materials; (b) emergency protective measures to eliminate or reduce immediate threats to life, public health or safety, or a hazard that threatens significant damage to improved public or private property; and (c) damages to roads and bridges, to include surfaces, bases, shoulders, ditches, drainage structures, piers, girders, abutments, slope protection, and approaches. To be eligible for a payment under the program, the local unit of government or tribe or band must pay 30% of the costs resulting from the disaster.

Act 269 created two appropriations to make disaster payments under the program to local units of government. A state disaster assistance GPR annual appropriation was created under DMA funded at \$0 annually during the 2005-07 biennium. Since its creation, the Legislature has never used this appropriation to provide funding for the program.

In addition, DMA has its SEG continuing state disaster assistance appropriation, which is funded by amounts provided from the petroleum inspection fund. Funds totaling \$630,700 SEG in this appropriation were carried over from 2010-11, into the current biennium. In addition, under 2011 Act 32, an additional \$1,000,000 SEG in expenditure authority was provided to the appropriation in 2011-12. As a continuing appropriation, any amounts appropriated will not lapse back to the petroleum inspection fund at the end of a fiscal year, but instead will remain in the appropriation until expended.

Under DMA administrative rules, in any quarter of a state fiscal year, DMA may not make payments to applicants under the program in excess of 25% of the total amounts allocated to the two disaster payment appropriations. If disaster assistance application payments requested during a quarter exceed 25% of the total amounts allocated to the two disaster payment appropriations, all accepted applications must be paid proportionately. During the last quarter of the state fiscal year, DMA must proportionately allocate and pay the balance of funds, if any, remaining in the two disaster payment appropriations among all the applications submitted during the fiscal year with unpaid eligible costs.

ANALYSIS

The Department of Military Affairs indicates that 132 applicants have estimated incurring approximately \$7.7 million in damages eligible for supplementation under the state disaster assistance program. Of these amounts, however, \$3.4 million represents an estimate of damage to roads and bridges which DMA believes will be addressed under the DOT flood damage aid payments program. Of the remaining \$4.3 million in estimated damages, based on past experience in reviewing such estimates, 40% to 50% of such estimated damages may ultimately be determined to be supplementable. If 50% of these damage estimates are determined to be supplementable, \$2.15 million in damages would be supplementable under the state disaster assistance program. Seventy percent (70%) of this amount (the state share of these costs under the state disaster assistance program), would equal \$1,505,000.

As of November 17, 2011, DMA indicated that \$1,435,800 SEG in available balances remained in its SEG continuing state disaster assistance appropriation. As a result, DMA estimated that eligible supplementable claims under the program exceeded available funding for disaster assistance by \$69,200. In order to fully fund all estimated supplementable current claims [\$69,200], and in order to provide additional funding for disasters that may occur through the end of the biennium [\$930,800], DMA requested a one-time supplement of \$1,000,000 SEG in 2011-12, from the Joint Committee on Finance's SEG sum sufficient general program supplementation appropriation [s. 20.865(4)(u)] to DMA's SEG continuing state disaster assistance appropriation [s. 20.465(3)(s)]. [Alternative 1]

Revenue to the segregated petroleum inspection fund is primarily generated from a 2¢ per gallon (including gasoline, diesel and heating oil) petroleum inspection fee. The fee generated approximately \$74 million in 2010-11. The Department of Safety and Professional Services (DSPS) is responsible for inspecting petroleum products brought in to the state to assure that the product meets minimum product grade and environmental specifications. The fund also supports the petroleum environmental cleanup fund award (PECFA) program which reimburses a portion of the cleanup costs of discharges from petroleum product storage systems and home heating oil systems. Funds also support DSPS's petroleum tank and inspection programs, transportation programs, and programs in several other agencies. Based on a review of the petroleum inspection fund, a sufficient balance exists to support the DMA disaster assistance request. Approval of the current request would reduce available fund balances to support the other activities supported by the fund.

Under s. 13.101(3) of the statutes, the Joint Committee on Finance may supplement the appropriation of any department which is insufficient because of unforeseen emergencies or insufficient to accomplish the purpose for which made, if the Committee finds that: (a) an emergency exists; (b) no funds are available for such purposes; and (c) the purposes for which a supplemental appropriation is requested have been authorized or directed by the Legislature.

Under current law, DMA administrative rules for the state disaster assistance program provide for the proration of damage claims if available balances are insufficient to fully fund all claims. As a result, it could be argued that it is not an unforeseen emergency to have estimated supplementable damage claims [\$1,505,000] exceed the available balance for damage payments [\$1,435,800]. Rather, DMA administrative rules specifically address this eventuality and provide that under these circumstances DMA must prorate approved damage claims. The Joint Committee on Finance could, therefore, conclude that the request does not represent an unforeseen emergency and deny the request. [Alternative 3] Under this alternative, DMA would prorate the available funding to eligible claimants based on the proration process identified above. While, as of November 17, 2011, sufficient funding was available to pay 95% of all estimated current claims, as proration is completed on a quarterly basis, and as additional disasters and associated claims may accrue before the end of the current fiscal year, the final level of proration for claims paid out in the 3rd and 4th quarters could be less than the amount identified.

Alternatively, the Committee could conclude that the DMA SEG continuing state disaster assistance appropriation is insufficient to accomplish the purpose for which made (the supplementation of local government disaster expenses) and that an emergency exists. As a result the Committee could provide \$69,200 SEG to the DMA SEG continuing disaster assistance appropriation to fully fund the estimated current supplementable claims. [Alternative 2(a)]

It could also be argued that the DMA SEG continuing state disaster assistance appropriation may be insufficient to accomplish the purpose for which made, and that an emergency exists in regards to funding additional disasters and associated damages that may occur through the end of the biennium. Further, while the Legislature provided for proration of claims under the program, it may not have intended that there would be no funding for any disasters that may arise in the second year of the current biennium. As a result, the Committee could provide a one-time supplement of \$1,000,000 SEG in 2011-12, to the DMA SEG continuing disaster assistance appropriation as requested by DMA, in order to provide funding for disasters that may occur through the end of the biennium. [Alternative 1]

When calculating average costs over the last six completed state fiscal years (2005-06 through 2010-11) in order to estimate the level of funding that might be required through the end of the biennium, DMA inadvertently included costs for disasters that occurred in the current fiscal year and calculated average annual costs over the last six state fiscal years of \$669,500. The Department subsequently multiplied this amount by a factor representing the number of months remaining in the biennium [19 months remaining in the 2011-13 biennium/12 months per year], and rounded down the result to estimate that it would need \$1,000,000 SEG to support the

program through June 30, 2013. [The Department did not separately budget for the \$69,200 that is estimated to be needed to fully fund all current claims.]

Utilizing DMA's methodology but excluding costs for disasters from 2011-12, it is estimated that over the first six state fiscal years of the program, the program has incurred average annual costs of \$543,600. Based on this expenditure history, the Committee could consider providing \$860,700 [$\$543,600 \times (19/12)$] to address possible disaster supplementation costs through the end of the biennium. [Alternative 2(b)].

It may be worth noting, however, that disaster supplementation costs have varied widely over the last six years of the program's experience. While the program paid out \$821,500 in disaster supplementation payments in 2006-07, in 2008-09, the program paid out \$204,500 in disaster supplementation payments. The Committee could also consider providing \$500,000 SEG [Alternative 2(c)] or \$250,000 SEG [Alternative 2(d)] to the DMA SEG continuing disaster assistance appropriation to provide funding for disasters that may occur through the end of the biennium. If this funding proved insufficient, DMA could seek an additional supplementation under a future s. 13.10 request to the Committee.

Finally, the Committee could elect to not provide any supplementation at this time for future disasters that may occur over the remainder of the current biennium. Under this alternative, the costs of any such disasters could be addressed in the future when DMA could provide specific damage cost information to the Committee associated with specific disasters.

ALTERNATIVES

1. Approve the request of the Department of Military Affairs (DMA) for a one-time transfer of \$1,000,000 SEG in expenditure authority in 2011-12, from the Joint Committee on Finance's SEG sum sufficient general program supplementation appropriation [s. 20.865(4)(u)] to DMA's SEG continuing state disaster assistance appropriation [s. 20.465(3)(s)] to provide additional funding for the state disaster assistance program. Funding would be provided from the petroleum inspection fund.

2. Transfer the identified amount on a one-time basis in 2011-12, from the Joint Committee on Finance's SEG sum sufficient general program supplementation appropriation [s. 20.865(4)(u)] to DMA's SEG continuing state disaster assistance appropriation [s. 20.465(3)(s)] to provide additional funding for the state disaster assistance program:

- a. \$69,200 SEG
- b. \$860,700 SEG
- c. \$500,000 SEG
- d. \$250,000 SEG

3. Deny the request.

Prepared by: Paul Onsager