



Legislative Fiscal Bureau

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May 6, 2014

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Military Affairs: Section 13.10 Request for Supplemental Funding for the Department of Defense Excess Property Program -- Agenda Item XIV

REQUEST

The Department of Military Affairs (DMA) requests the transfer of \$46,000 GPR in 2013-14, and \$95,200 GPR in 2014-15, from the Joint Committee on Finance's GPR supplemental appropriation [20.865(4)(a)] to the Department's emergency management services general program operations appropriation [20.465(3)(a)] to fund Department costs related to administering the state's U.S. Department of Defense (DOD) excess property program, otherwise known as the 1033 federal military excess property program. Further, DMA requests the transfer of \$92,500 GPR annually from the Department of Administration's (DOA) federal resource acquisition support grants appropriation [20.505(1)(fo)] to the Department's emergency management services general program operations appropriation to continue to pay the Wisconsin Technical College System Foundation (WTCSF) for administrative services provided by the Foundation to support the 1033 federal military excess property program.

BACKGROUND

Section 1033 of the National Defense Authorization Act of 1997, permits the 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 federal government does not charge receiving law enforcement agencies for the equipment itself, but the receiving agencies are responsible for paying all costs associated with transportation, upkeep and disposal of the equipment, and must maintain sufficient insurance coverage. Certain items that have more strictly civilian applications typically become the property of receiving agencies after one year and there are no further tracking or reporting

responsibilities associated with this equipment to the federal government. All other equipment under the program, such as aircraft and firearms, are conditionally transferred, and the receiving agencies and the state have an ongoing responsibility to track and report this equipment to the federal government. All conditionally transferred equipment may be recalled by the federal government, and must be returned to the federal government or disposed of in compliance with federal regulations if no longer needed.

Prior to 2013 Act 20, federal Homeland Security grant funds and the 1033 program were both administered by the Department of Administration's Office of Justice Assistance (OJA). However, under Act 20, OJA was eliminated and its various functions, programs and staff transferred to DMA, and the Departments of Justice and Corrections. As a part of this reorganization, the administration of federal Homeland Security grant funds was transferred from OJA to DMA. In addition, effective November 14, 2013, the Governor designated Wisconsin Emergency Management within DMA to provide oversight for the 1033 program.

The Department indicates that when the program was at OJA, the Office utilized federal Homeland Security grants to fund its staff that carried out 1033 program activities. The Department further indicates that, "Homeland Security grants are intended to build capacity and improve the capabilities of state and local governments to prevent and respond to acts of terrorism and other catastrophic events, but are not intended to support sustainment activities like the day-to-day administration of the 1033 program. Since the costs of 1033 program administration were not separately identified by the Office of Justice Assistance and were not reviewed in a federal audit, there is no guidance that would indicate that 1033 program administration is an allowable use of the homeland security grant funds. "

As was OJA, the Department is responsible for ensuring that the state and participating law enforcement agencies comply with federal law governing the state's participation in the program. As a part of this responsibility, the Department intends to complete an onsite review of each law enforcement agency that possesses conditionally transferred property under the program (property that may be recalled by the federal government) every four years. The Department also maintains an up-to-date list of property which: (a) will be unconditionally transferred to receiving law enforcement agencies after one year; and (b) is conditionally transferred only, and must be tracked on an ongoing basis until recalled by or returned to the federal government, or disposed of in accordance with federal regulations.

While Homeland Security grant fund administration was transferred from OJA to DMA under Act 20, and while OJA utilized Homeland Security grant funding to carry out its administrative responsibilities under the 1033 program, DMA has concluded that this program support is an impermissible use of federal funding. In addition, DMA indicates that it has no other base resources specifically provided to carry out its responsibilities for the 1033 program. The Department's current s. 13.10 request to the Committee is intended to address this need.

As did OJA, the Department intends to contract with the WTCSF to carry out other administrative responsibilities associated with the 1033 program. Like OJA, DMA intends to utilize the \$92,500 GPR annually provided to the DOA federal resource acquisition support grants appropriation to partially address the costs incurred by the WTCSF to administer the 1033 program.

Under the proposed contract between DMA and the WTCSF, the state is obligated to pay this \$92,500 GPR annually to the WTCSF for indirect expenses, for warehouse and storage lot expenses, and to pay for staff, supplies, travel and other 1033 program expenses.

Under the proposed contract between DMA and WTCSF for 2013-15, WTCSF is obligated to: (a) continue to collect a \$500 annual enrollment fee from state and local law enforcement agencies participating in the 1033 program; (b) require participating law enforcement agencies to pay the transportation, repair, and handling fees for all property that is received under the program; (c) provide information and application materials to law enforcement agencies interested in the program; (d) receive and approve applications for enrollment subject to receipt of the required \$500 annual enrollment fee; (e) screen excess property needed by law enforcement agencies stored in its warehouse and otherwise available under the 1033 program; (f) tag or freeze, on the federal Reutilization Transfer and Donation website, excess DOD property on behalf of state and local law enforcement agencies; (g) after approval by the federal government, arrange transportation of excess property directly to the acquiring law enforcement agencies or to the WTCSF warehouse; (h) maintain a list of excess property received by Wisconsin law enforcement agencies specifying: (1) name of receiving agency; (2) property item received; (3) date received; (4) original costs associated with receiving the equipment; (5) repair costs; (6) transportation charges; and (7) handling fees; (i) after obtaining permission from the federal government, dispose of 1033 property no longer usable or wanted by Wisconsin law enforcement agencies and utilize any sale revenue to support the 1033 program; and (j) notify DMA whenever there are duties requiring Department action initiated by the federal government, including required signatures, compliance activities, or other oversight responsibilities. For the current fiscal year, the Foundation has continued to carry out these responsibilities in anticipation of the contract being entered into by DMA on behalf of the state.

Table 1 identifies the 2013-14 budget for the WTCSF to administer its responsibilities under the 1033 program. The funding to support this budget is provided from the following revenue sources: (a) \$92,500 GPR in funding from DOA's federal resource acquisition support grants appropriation; (b) \$82,500 in carryover funding from the prior fiscal year; (c) \$20,000 in program income (primarily proceeds from auctioned equipment that may be unconditionally transferred); (d) \$18,500 in annual \$500 application fees from participating law enforcement agencies; and (e) \$15,000 in transportation and service fees.

TABLE 1

2013-14 1033 Program Budget for the Wisconsin Technical College System Foundation

<u>Item</u>	<u>Amount</u>
Staff	\$100,000
Transportation	50,000
Indirect	45,000
Warehouse Rent	18,000
Services/travel	<u>7,000</u>
Total	\$220,000

The 2011-13 budget act amended state statute to grant the Department of Justice (DOJ) the authority to transfer up to \$98,300 annually in discretionary settlement funds from the DOJ administrative services gifts, grants and proceeds appropriation to the PR continuing federal resource acquisition appropriation under DOA [s. 20.505(1)(kg)] to support the 1033 federal military excess property program as directed by the Attorney General. Discretionary settlement funds received from legal settlements are deposited to DOJ's administrative services gifts, grants and proceeds PR continuing appropriation [s. 20.455(3)(g)]. Discretionary settlement funds may typically be used by DOJ for broad purposes at the discretion of the Attorney General.

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; (q) mine resistant ambush protected vehicles; and (r) weapons.

There are approximately 575 law enforcement agencies in Wisconsin. In 2012-13, 37 law enforcement agencies participated in the 1033 program, including four state agencies, the Departments of Natural Resources and Military Affairs, and the UW-Madison and UW-Milwaukee Police Departments. In 2013-14, 38 law enforcement agencies have committed to participate in the 1033 program, including one state agency, the Department of Natural Resources.

In 2012-13, the estimated fair market value of property acquired under the program totaled \$994,100, including \$966,500 in property to local law enforcement agencies and \$27,600 to state law enforcement agencies. For 2013-14 (thru mid-April), the estimated fair market value of property acquired under the program (excluding mine resistant ambush protected vehicles) totaled \$1,547,500, including \$1,544,700 in property to local law enforcement agencies and \$2,800 to state law enforcement agencies. For 2013-14, the Department anticipates delivering 24 mine resistant ambush protected vehicles totaling \$17,121,000 in value, all to local law enforcement agencies. The Department indicates that modifications are made by DOD to these vehicles to reflect their anticipated usage in a civilian law enforcement context. In particular, the gun turrets on these vehicles are removed before they are transferred to local law enforcement agencies.

ANALYSIS

Under this s. 13.10, DMA requests the transfer of \$92,500 GPR annually from DOA's federal resource acquisition support grants appropriation to DMA's emergency management services general program operations appropriation to pay the WTCSF for administrative services provided by the Foundation to support the 1033 federal military excess property program. As the Legislature budgeted this funding for this purpose under Act 20, and as the Foundation has continued to provide these administrative services, the Committee could consider transferring this funding. [Alternative 1.B.]

The Department of Military Affairs further requests the transfer of \$46,000 GPR in 2013-14, and \$95,200 GPR in 2014-15, from the Joint Committee on Finance's GPR supplemental appropriation to DMA's emergency management services general program operations

appropriation to fund its costs related to administering the 1033 federal military excess property program. Table 2 details how the Department would utilize the requested funding.

TABLE 2

2013-15 DMA Request for 1033 Program Administration Resources

<u>Item</u>	<u>2013-14</u>	<u>2014-15</u>
Salary and Fringe		
Program Analyst	\$5,800	\$10,100
Compliance Specialist Lead--1 LTE	14,000	28,100
Compliance Field Representatives--4 LTEs	18,000	36,000
Travel	5,000	20,000
Supplies		
Laptop/aircard for compliance specialist	2,750	0
Cell phone for compliance specialist	250	600
Postage and email	<u>200</u>	<u>400</u>
Total	\$46,000	\$95,200

As the Department has ongoing responsibilities to monitor compliance with federal regulations in regards to conditionally transferred equipment whose title has not passed to the relevant state and local law enforcement agencies, DMA indicates that there are currently 168 law enforcement agencies with conditionally transferred equipment who must be included in on-site compliance monitoring reviews. As a result, in order to visit each law enforcement agency every four years, the Department has about 42 on-site compliance reviews to complete annually under the 1033 program. The requested budget would be utilized by DMA to carry out and follow-up on any issues identified in these compliance reviews, maintain an accurate list of all transferred equipment that has been conditionally transferred or for which the 12-month period before unconditional transfer has not yet run, and coordinate with the federal government and the WTCSF in administering the state's 1033 program. Further, Department staff indicates that, "Because the department will need to catch up on the compliance reviews that must be completed this year, the budget assumes that the staff will need to work additional hours between April and June 2014 in order to remain in compliance. "

The Department indicates that two incumbents at the Department who are 100% funded from federal Homeland Security grant funding would be utilized to provide oversight of the 1033 program at DMA, including oversight of the compliance LTEs. The request would utilize existing GPR program analyst position authority (0.3 FTE in 2013-14, and 0.1 FTE in 2014-15) to permit these incumbents to work on the 1033 program and not impermissibly utilize Homeland Security grant funding. The additional GPR funding for these positions under the request would permit the incumbents to be paid at their regular hourly rate for time spent administering the 1033 program.

As the 1033 program is a statutorily established program and as DMA indicates that the agency base funding source for the program, federal Homeland Security grant funding, can no

longer be utilized to administer the program, the Committee could consider approving the Department's request to transfer \$46,000 GPR in 2013-14, and \$95,200 GPR in 2014-15, from the Joint Committee on Finance's GPR supplemental appropriation to DMA's emergency management services general program operations appropriation to fund DMA administration costs. [Alternative 1.A.]

The current unreserved balance in the Committee's GPR supplemental appropriation totals \$84,700 GPR in 2013-14, and \$133,600 GPR in 2014-15. If the Committee were to approve the Department's request, the remaining net unreserved balance in the supplemental appropriation for state agency emergency funding requests through the remainder of the biennium would total \$77,100 GPR (\$38,700 GPR in 2013-14, and \$38,400 GPR in 2014-15). The Committee could, however, also consider the availability of other funding sources to address the need for 1033 program funding, and preserve Committee funding for other possible state agency emergency funding requests through the remainder of the biennium.

A DMA re-estimate of its energy costs appropriation [s. 20.465(1)(f)] indicates that of the \$2,692,600 GPR in expenditure authority in 2013-14, \$99,700 GPR is currently estimated to not be needed to address fuel and utility costs in the fiscal year. Based on an updated re-estimate of this appropriation for 2014-15, to reflect actual energy costs for 2012-13, it is estimated that up to \$143,700 GPR in expenditure authority in 2014-15, may not be needed to address fuel and utility costs, based on a five-year average of winter weather. However, a cold upcoming winter could put additional strain on fuel and utility costs to be paid from this appropriation, not reflected in this updated estimate.

In order to address the Department's identified need for 1033 program administration funding, the Committee could consider utilizing a portion of DMA's energy appropriation and unreserved balances in the Committee's GPR supplemental appropriation by transferring: (a) \$46,000 GPR in 2013-14 from the DMA energy costs; energy-related assessments GPR annual appropriation to the DMA emergency management services general program operations appropriation in 2013-14; (b) \$53,700 GPR in 2013-14 from the DMA energy costs; energy-related assessments GPR annual appropriation to the DMA emergency management services general program operations appropriation in 2014-15; and (c) \$41,500 GPR in unreserved balances in 2013-14, from the Committee's GPR supplemental appropriation to DMA's emergency management services general program operations appropriation in 2014-15. This alternative would permit DMA to retain its full expenditure authority for fuel and utility costs in 2014-15. [Alternative 2]

Alternatively, the Committee could also consider only utilizing available GPR in DMA's energy appropriation by transferring: (a) \$46,000 GPR in 2013-14 from the DMA energy costs; energy-related assessments GPR annual appropriation to the DMA emergency management services general program operations appropriation in 2013-14; (b) \$53,700 GPR in 2013-14 from the DMA energy costs; energy-related assessments GPR annual appropriation to the DMA emergency management services general program operations appropriation in 2014-15; and (c) \$41,500 GPR in 2014-15 from the DMA energy costs; energy-related assessments GPR annual appropriation to the DMA emergency management services general program operations appropriation in 2014-15. Under this alternative, DMA's estimate of its administrative resource

need to administer the 1033 program would be addressed through the transfer of \$99,700 GPR in 2013-14, that is estimated will not be utilized by the Department to pay its fuel and utility costs, and through the transfer of \$41,500 GPR in 2014-15 in appropriated fuel and utilities funding to Emergency Management Services. [Alternative 3]

Finally, the Committee could deny the request. The Department has indicated that without administrative funding, it would have to consider ending the program. The Department indicated that law enforcement agencies have found the program to be a valuable program in carrying out their responsibilities. While substantially higher than the prior fiscal year, it is estimated that participating law enforcement agencies will receive at least \$18,668,500 in equipment under the program in 2013-14. Finally, Department staff indicate that the state would have to coordinate the return or disposal of conditionally transferred equipment under the program if the program were to close. [Alternative 4]

ALTERNATIVES

1. Approve the Department of Military Affairs' request to transfer:
 - a. \$46,000 GPR in 2013-14, and \$95,200 GPR in 2014-15, from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to the Department of Military Affairs' (DMA) emergency management services general program operations appropriation [s. 20.465(3)(a)] to fund Department costs related to administering the 1033 federal military excess property program.
 - b. \$92,500 GPR annually from the Department of Administration's federal resource acquisition support grants appropriation [s. 20.505(1)(fo)] to DMA's emergency management services general program operations appropriation to pay the Wisconsin Technical College System Foundation (WTCSF) for administrative services provided by the Foundation to support the 1033 federal military excess property program.
2. Approve the transfer of: (a) \$46,000 GPR in 2013-14 from the DMA energy costs; energy-related assessments GPR annual appropriation [s. 20.465(1)(f)] to the DMA emergency management services general program operations appropriation in 2013-14; (b) \$53,700 GPR in 2013-14 from the DMA energy costs; energy-related assessments GPR annual appropriation to the DMA emergency management services general program operations appropriation in 2014-15; and (c) \$41,500 GPR in unreserved balances in 2013-14, from the Committee's GPR supplemental appropriation to DMA's emergency management services general program operations appropriation in 2014-15. [This alternative would permit DMA to retain its full expenditure authority for fuel and utility costs in 2014-15.]
3. Approve the transfer of: (a) \$46,000 GPR in 2013-14 from the DMA energy costs; energy-related assessments GPR annual appropriation to the DMA emergency management services general program operations appropriation in 2013-14; (b) \$53,700 GPR in 2013-14 from the DMA energy costs; energy-related assessments GPR annual appropriation to the DMA emergency management services general program operations appropriation in 2014-15; and (c) \$41,500 GPR in 2014-15 from the DMA energy costs; energy-related assessments GPR annual

appropriation to the DMA emergency management services general program operations appropriation in 2014-15. [Under this alternative, DMA's estimate of its administrative resource need to administer the 1033 program would be addressed through the transfer of \$99,700 GPR in 2013-14, that is estimated will not be utilized by the Department to pay its fuel and utility costs, and through the transfer of \$41,500 GPR in 2014-15 in appropriated fuel and utilities funding to Emergency Management Services.]

4. Deny the request.

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