



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

August 10, 2012

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 III

REQUEST

The Department of Military Affairs (DMA) requests a one-time transfer of \$1,000,000 SEG in expenditure authority in 2012-13, 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

Under 2005 Wisconsin Act 269, the state created the state disaster assistance program to make payments to local units of government for governmental damages and costs incurred as the result of a "major catastrophe." A "major catastrophe" was defined as a disaster, including a drought, earthquake, flood, high water, high wind, hurricane, landslide, mudslide, snowstorm, or tornado, *that resulted in the Governor requesting a presidential declaration of a major disaster under federal law.* [Emphasis Added]

Under Act 269, the program made payments to local units of government for their damages and costs incurred as the result of a "major catastrophe" if federal assistance was not available for that catastrophe because: (a) the Governor's request that the President declare the catastrophe a major disaster under federal law was denied; or (b) the disaster did not meet the statewide or countywide per capita minimum threshold for damage under the public assistance program that is administered by the Federal Emergency Management Agency (FEMA).

Under administrative rules issued by DMA, payments may be made under the program to local governmental units if all of the following eligibility criteria are satisfied: (a) the local governmental unit has suffered a "major catastrophe"; (b) a disaster or emergency declaration was issued by the local governmental unit or the state during the incident period of the "major catastrophe"; (c) the damages suffered and eligible costs incurred are the direct result of a "major catastrophe"; (d) federal disaster assistance is not available for that "major catastrophe" because the Governor's request that the President declare the catastrophe a major disaster has been denied or where no federal assistance is requested because the "major catastrophe" does not meet the statewide or countywide per capita impact indicator under the public assistance program guidelines issued by FEMA; (e) at least one local governmental unit within the county or a tribal governmental unit has incurred public assistance costs that equal or exceed the countywide per capita impact indicator under the public assistance program guidelines issued by FEMA (only local units of government that reach this threshold will be eligible for assistance); and (f) the local governmental unit will contribute at least 30% of the total amount of eligible costs incurred from the "major catastrophe" from other funding sources.

Under 2009 Act 42, a local governmental unit or federally recognized American Indian tribe or band is eligible to receive payments under the state disaster assistance program for the damages and costs incurred as the result of a "disaster," instead of a "major catastrophe". A "disaster" is defined as a severe or prolonged, natural *or human-caused*, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems. [Emphasis Added]

As amended under Act 42, the Governor does not need to request a presidential declaration of a major disaster under federal law for eligible local units of government or Indian tribes to receive payments under the program. Act 42 further provides that a disaster can include those of human origin. Despite the changes to the program made by Act 42, DMA staff indicate that they are still utilizing the eligibility criteria that incorporate the standard of a "major catastrophe" when determining eligibility for payment under the program. Arguably, the eligibility criteria for the program under DMA administrative rules need to be revised to reflect the changes made by Act 42. Department staff indicates that they are working with DMA legal counsel to formulate and promulgate amended rules for the program.

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 not 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. This appropriation carried over \$630,667 in balances from 2010-11, into the current biennium. In addition, a \$6,263 refund of a prior payment increased the available balance in the appropriation to \$636,930 SEG. Under 2011 Act 32, an additional \$1,000,000 SEG in expenditure authority was provided to the appropriation

in 2011-12. Finally, on December 7, 2011, under s. 13.10 of the statutes, the Joint Committee on Finance provided an additional \$1,000,000 SEG in expenditure authority to this 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.

The following table identifies amounts that have been expended under the state disaster assistance program for each of the first six completed state fiscal years for which it has existed. Annual expenditures have ranged from a low of \$204,500 in 2008-09, to a high of \$821,500 in 2006-07. Expenditures for the first six completed state fiscal years have totaled \$2,511,900, with average annual expenditures of \$418,650.

State Disaster Assistance Program Expenditure History

<u>Fiscal Year</u>	<u>Expenditures</u>
2005-06	\$321,200
2006-07	821,500
2007-08	268,900
2008-09	204,500
2009-10	378,300
2010-11	<u>517,500</u>
Total	\$2,511,900
6-Year Average	\$418,650

ANALYSIS

For 2011-13, the SEG continuing state disaster assistance appropriation has \$2,636,930 SEG in available balances to make payments to local units of government and Indian tribes for eligible costs as determined by DMA administrative rule. Prior to the storms during late May and June of 2012, DMA had made or approved total payments under the state disaster assistance program for 2011-12 totaling \$2,866,456 as identified in the table below.

**Disaster Assistance Program Payments
2011-12**

<u>County</u>	<u>Claim Status</u>			<u>Total</u>
	<u>Paid</u>	<u>Pending</u>	<u>Approved</u>	
Adams	\$158,566		\$107,086	\$265,652
Ashland	5,655	\$2,954		8,609
Barron	3,563	12,777	369	16,709
Bayfield	2,623	3,622		6,245
Buffalo	33,064			33,064
Burnett	743,519	44,253		787,772
Douglas	94,184	8,946	11,482	114,612
Dunn	171,289	25,904	24,594	221,787
Forest	4,118			4,118
Grant	8,342			8,342
Iron	26,783			26,783
Jackson	2,878	4,543		7,421
Kenosha	554,786	70,608		625,394
Lincoln	162,039			162,039
Marathon	3,338			3,338
Marinette	2,734			2,734
Outagamie	9,516	32,504		42,020
Polk	27,596		3,711	31,307
Portage	73,181			73,181
St. Croix	29,497	16,820		46,317
Washburn	105,846			105,846
Waukesha	16,030			16,030
Waushara			193,698	193,698
Winnebago	<u>4,116</u>	<u> </u>	<u>59,324</u>	<u>63,439</u>
Total	\$2,243,262	\$222,931	\$400,263	\$2,866,456

Of the \$2,866,456 in approved claims, 51% of these claims, or \$1,469,470, date back to the prior biennium. However, it may be worth noting that \$625,394 in claims relates to a storm that occurred on the last day of the 2009-11 biennium. In addition, 33% of the claims, or \$945,756, relates to a storm that occurred on the first day of the current biennium and affected Bayfield, Burnett, Douglas, and Washburn Counties. Only 16% of the approved claims, or \$451,230 relate to storms that occurred after the first day of the current biennium.

In order to fully fund all currently approved claims under the program, an additional \$229,526 in funding would be required. In addition, DMA indicates that preliminary damage estimates from the May and June storms total \$2,634,500. [These amounts do not include damages sustained by the University of Wisconsin-Superior. The University of Wisconsin-Superior is not eligible to apply for reimbursement under the state disaster assistance program as it is neither a local unit of government nor a federally recognized American Indian tribe or band.]

As of July 2, 2012, 96% of the reported damage from the May and June storms was attributable to road damage. Military Affairs staff indicates that it is not clear at this time how much of this road damage may be compensated under the Department of Transportation (DOT) flood damage aids program and how much of it may be reimbursed under DMA's state disaster assistance program. The flood damage aids program provides financial assistance to local governments to repair highways, streets, alleys, or bridges that have had major damage due to flooding.

In order to provide funding for currently approved claims in excess of available balances under DMA's SEG continuing state disaster assistance appropriation [\$229,526], and in order to have additional balances to address storm damage in May and June of this year, DMA is requesting that the Committee transfer \$1,000,000 SEG on a one-time basis in 2012-13, from the Joint Committee on Finance's SEG sum sufficient general program supplementation appropriation to DMA's SEG continuing state disaster assistance appropriation. Revenue for the request would be provided from the petroleum inspection fund.

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 2011-12. 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 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. Since DMA administrative rules specifically address this eventuality and provide that under these circumstances DMA must prorate approved damage claims, the Committee could deny the request. [Alternative 3] Under this alternative, DMA would prorate the available funding to eligible claimants based on the proration process identified above.

Conversely, 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 \$1,000,000 SEG to the DMA SEG continuing disaster assistance appropriation to fund currently approved claims as well as claims that will be approved from the May and June, 2012, storms. [Alternative 1]

Alternatively, the Committee could elect to provide \$229,500 SEG to the DMA SEG

continuing disaster assistance appropriation to fund claims that have already been reviewed and approved by DMA that exceed the available balances in this appropriation. Under this alternative, DMA could return to the Committee with an additional supplementation request when more information is available as to the damages from the May and June 2012 storms that may be reimbursed from the state disaster assistance program after accounting for aid received under the DOT flood damage aid program. [Alternative 2]

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 2012-13, 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. Provide \$229,500 SEG on a one-time basis in 2012-13, 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.

3. Deny the request.

Prepared by: Paul Onsager