



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>

April 18, 2018

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Military Affairs: Section 13.10 Request for a Permanent Position for the Department of Defense Excess Military Property Program -- Agenda Item IX

REQUEST

In 2018-19, provide \$80,200 GPR and 1.0 GPR permanent position, and delete \$80,200 PR and 1.0 PR project position associated with the U.S. Department of Defense excess military property program. Funding would be provided from the Joint Committee on Finance GPR supplemental appropriation.

BACKGROUND

Section 1033 of the National Defense Authorization Act of 1997 permits the federal Department of Defense (DOD) to transfer excess military property to eligible state and local law enforcement agencies for use in counter-drug, counter-terrorism, and other law enforcement activities. Law enforcement agencies are eligible to participate in the program if the agency's 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 federal government does not charge receiving law enforcement agencies for the equipment itself, but the receiving agencies are responsible for costs associated with the transportation, upkeep, and disposal of equipment, as well as insurance. In addition, in Wisconsin, the Department of Military Affairs' Division of Emergency Management (commonly referred to as Wisconsin Emergency Management -- WEM) requires agencies to pay an annual enrollment fee to participate in the program, totaling between \$150 and \$1,000, depending on the size of the agency.

Excess military property available under the military property program (also known as the 1033 program) includes tactical and utility vehicles and firearms, as well as a variety of equipment, supplies, and tools. 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 the equipment. All other equipment under the program, such as firearms and armored vehicles, 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.

Effective November 14, 2013, the Governor designated WEM as the agency responsible for oversight of the state's participation in the program. In overseeing the program, WEM ensures that participating law enforcement agencies are complying with federal regulations under the program and facilitates law enforcement agencies' acquisition of excess military property.

The Department utilizes a combination of GPR and program revenue to support the administration of the program. Program revenue funding is derived from annual enrollment fees charged to participating law enforcement agencies. Program revenue is received in DMA's emergency management program services continuing PR appropriation. In addition to supporting the military property program, this appropriation is utilized to support the Regional Emergency All Climate Training (REACT) Center, conferences, training, and other services provided by WEM, as well as WEM's radiological emergency preparedness program.

In order to participate in the 1033 program, a state must sign a Memorandum of Agreement with DOD's Defense Logistics Agency. Under the agreement, failure to meet requirements related to compliance, inventory, reporting, and recordkeeping will result in the suspension or termination of the state's participation.

In overseeing the 1033 program, WEM 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 part of this responsibility, WEM staff completes 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). The Department also maintains an up-to-date list of property which: (a) will be unconditionally transferred to the receiving law enforcement agency after one year; and (b) is conditionally transferred, 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.

In addition, WEM staff: (a) communicate with and register participating law enforcement agencies; (b) identify, acquire, distribute, and dispose of military property; (c) review 1033 property requests submitted by law enforcement agencies; (d) maintain a website identifying information about the program; and (e) maintain inventory and other records.

Under the 1033 program, excess military property is available from the federal Department of Defense on a "where is, as is" basis. The program provides a wide variety of excess equipment to law enforcement agencies, including: (a) clothes; (b) boots; (c) blankets; (d) first aid supplies; (e) body armor and other protective equipment; (f) tools; (g) office supplies (such as storage cabinets, chairs, copiers, printers, fax machines, lamps, and telephones); (h) cameras; (i) video

cameras; (j) computers; (k) televisions; (l) boats; (m) vehicles; (n) all-terrain vehicles; (o) mine resistant ambush protection vehicles (MRAPs); and (p) weapons.

Generally, law enforcement agencies seeking to acquire excess military property may submit a request through a website managed by DOD. If a law enforcement agency is seeking to procure small arms from the program, the request must be made directly through WEM, as opposed to through the DOD's website. In addition, program equipment that has been received by a law enforcement agency may be transferred to another law enforcement agency. Whether a law enforcement agency is requesting property through DOD's website, directly through WEM, or through a transfer from another law enforcement agency, WEM staff review each request for equipment to ensure the following: (a) the requesting agency is a law enforcement agency; (b) the agency has paid or will pay the enrollment fee as well as any necessary transportation costs; (c) the agency is compliant with program requirements; (d) the agency has provided justification for receiving the property; and (e) the agency is not requesting more equipment than its number of officers warrant.

As of January, 2017 (the latest figure available), there were 566 law enforcement agencies (LEAs) in Wisconsin with certified law enforcement officers. In calendar year 2016 and calendar year 2017, 48 Wisconsin LEAs were enrolled in the 1033 program; in calendar year 2018, 31 LEAs are enrolled. Note that an agency is "enrolled" in the program during a calendar year if it pays an enrollment fee to procure new equipment for the program during that calendar year. In total, WEM staff indicates that there are 204 active LEAs currently participating in the 1033 program. For the purposes of the 1033 program, an LEA is "participating" in the program if the LEA has an active DOD Activity Address Code to identify the agency as having active authority to requisition property and the LEA has a current State Plan of Operations contract on file with WEM. Notably, LEAs "participating" in the program include those agencies that may not have procured new equipment under the program in a given year, but have conditionally transferred property from previous years that must be continually tracked and reported.

The original acquisition value of the property received under the 1033 program by Wisconsin LEAs totaled \$8,142,300 in calendar year 2017 and \$2,096,000 in calendar year 2018 (to date). The original acquisition value of all conditionally transferred property currently in the possession of Wisconsin LEAs, as well as unconditionally transferred property received since January 1, 2017, totals \$39,546,300.

At the May 6, 2014, s. 13.10 meeting, the Finance Committee transferred \$92,500 GPR annually from DOA to DMA for DMA to administer the 1033 program. The funding was intended to make annual payments to the Wisconsin Technical College System Foundation, Inc. (WTCSF), who assisted in the administration of the 1033 program at that time. On May 19, 2014, WTCSF sent a letter to the Secretary of DOA as well as the Director of WEM indicating that the Foundation would no longer continue to contract to operate the 1033 program after June 30, 2016. Accordingly, under 2015 Act 55, DMA was provided \$97,300 GPR in 2015-16 and \$85,200 GPR in 2016-17 in order to take over all responsibilities of administering the 1033 program. In total, DMA's GPR funding for the 1033 program in 2016-17 was \$177,700 GPR (\$92,500 GPR from the May, 2014, s. 13.10 meeting and \$85,200 GPR from 2015 Act 55).

On February 25, 2016, DOA, on behalf of DMA, requested the creation of 1.0 permanent program and policy analyst PR position in WEM's program services appropriation in order to support DMA's administration of the 1033 program, under s. 16.505 of the statutes. The position and program funding were intended to support personnel, program compliance, database management, inventory control, and help desk functions associated with WEM's administration of the 1033 program. As requested by DMA, the position was to be supported by the one-time transfer of revenue totaling \$113,100 PR from the WTCSF to DMA in 2015-16. Due to the one-time nature of the funding source for the position, the Committee approved DMA's request (on March 16, 2016) to create 1.0 program and policy analyst PR position, subject to the condition that the position was created as a project position through June 30, 2017.

In the 2017-19 biennial budget, the Governor requested \$80,200 PR and 1.0 PR position annually to convert the 1.0 program and policy analyst project position created in the March, 2016, s. 16.505 request to a permanent position. Under the 2017-19 biennial budget (2017 Act 59), the project position end date was extended through June 30, 2019. In addition, Act 59 reduced funding to DMA's emergency management services general program operations appropriation by a corresponding \$80,200 GPR annually to maintain a total program budget of \$177,700.

The annual budget in the 2017-19 biennium for the program is identified in Table 1.

TABLE 1

Military Property Program Annual Budget

	<u>GPR</u>	<u>PR</u>	<u>Total</u>
Salary	\$0	\$47,800	\$47,800
Fringe Benefits	0	22,400	22,400
Supplies and Services	<u>97,500</u>	<u>10,000</u>	<u>107,500</u>
Total	\$97,500	\$80,200	\$177,700

ANALYSIS

On December 7, 2017, DMA requested that the 1.0 PR project position created under Act 59 be converted to 1.0 GPR permanent position in 2018-19. In connection with the funding source conversion, PR funding would be reduced by \$80,200 in 2018-19, and \$80,200 GPR would be transferred from the Committee's appropriation to DMA's appropriation for emergency management services. The requested GPR funding is identical to that removed under Act 59.

According to DMA, program revenue to support program administration will not be sufficient to support the program after 2017-18. The Department receives program revenue from annual enrollment fees charged by WEM to law enforcement agencies for participation in the 1033 program. These fees are identified in Table 2.

TABLE 2

1033 Program Enrollment Fees for Wisconsin Law Enforcement Agencies

<u>Number of Sworn Officers</u>	<u>Enrollment Fee</u>
0 thru 49	\$150
50 thru 99	300
Over 99	600
State agencies	1,000

Program enrollment fees generated \$13,100 PR in 2015-16 and \$12,500 PR in 2016-17. To date, enrollment fees have generated \$2,250 PR in 2017-18 (through March, 2018). In addition to enrollment fees, WEM received \$113,100 PR from the WTCSF in 2015-16 when full administration of the program was transferred to WEM. The funding transferred from the Foundation to WEM related to the 1033 program budget that the Foundation accrued over several fiscal years. In total, as of March, 2018, the 1033 program had accrued a program revenue balance of \$82,700. The balance is net of program expenditures of \$58,200 PR in 2017-18 through March, 2018.

Expenditures for the military property program are included in the continuing appropriation entitled "Program Services." As a continuing appropriation, the program may incur expenditures to the extent that revenue is available. Based on expenditures to date (\$58,200), DMA estimates that PR expenditures in 2017-18 will be \$90,600. Further, based on revenue collected to date, the Department estimates revenue to support the program will be approximately \$9,100 in 2017-18. As a result, when combined with the carryover balance from the prior year (\$138,700) DMA estimates that approximately \$57,200 in revenue will remain in the balance at the end of the current fiscal year.

The Department indicates that given the program's current fee structure, the current revenue balance, "along with anticipated future enrollment fees, could only support the program revenue supported position through fiscal year 2018." The Department also states that "Without a 1033 Program Coordinator to administer the program, the 1033 Program will no longer be in compliance with federal regulation related to the tracking of" transferred equipment. Lastly, "...if the state ceases to administer the 1033 program, all conditionally transferred equipment must be turned into the federal government at the state's cost."

For these reasons, DMA requests the creation of 1.0 GPR permanent position in 2018-19 and the transfer of \$80,200 GPR in 2018-19 from the unreserved balance of the Committee's supplemental appropriation to DMA. [Alternative 1] The Committee's biennial supplemental appropriation has an unreserved balance of \$133,600 GPR annually. To date, no funding has been released from unreserved portion of the appropriation.

The retention of a program coordinator position is a component of complying with the federal regulations regarding the military property program ("Each participating state's governor is

required to appoint a State Coordinator to ensure the program is used correctly by the participating law enforcement agencies."). While the position created in 2017 Act 59 was established as a project position because of the nature of the revenue stream, the Department argues that the hiring and retention of a permanent position is necessary to provide for greater continuity of the program and to meet federal requirements. Revenues for the program vary with program enrollments. However, based on revenues generated in the past two years, and assuming DMA's 2017-18 revenue projection, on average the program will generated annual revenue of \$11,600.

As an alternative to the Department's request and taking account of available PR funding, the Committee could split fund the 1.0 position at 75% GPR and 25% PR. Under this alternative, 1.0 permanent position (0.75 GPR and 0.25 PR) could be created, funded at \$60,100 GPR and \$20,100 PR in 2018-19. Further, the 1.0 PR project position created in Act 59 and \$80,200 PR in 2018-19 could be eliminated. [Alternative 2] This alternative could provide for long-term administrative support for the program, while also utilizing program fees. This alternative would allow the PR revenue to be expended to support the program until approximately 2023-24.

Under s. 13.101(3)(a)3. of the statutes, the Committee may supplement a state agency's funding because of unforeseen emergencies if funding is insufficient to accomplish the stated purpose, and if the Committee finds that the purpose for which the supplement is requested has been authorized and directed by the Legislature. As indicated previously, the budget bill, as introduced by the Governor, would have provided \$80,200 PR annually and 1.0 PR permanent position. The Governor's recommendation was modified to make the position a two-year project position, and reduced a corresponding amount of GPR funding. The Department's request would restore GPR funding in 2018-19 for the program deleted in the 2017-19 biennial budget act. In addition, the Department's request is for the 2018-19 fiscal year.

The fee structure for the program is not established in statute or in administrative rule. The current fee was developed by the Department in conjunction with law enforcement agencies, and was intended to particularly allow participation of smaller agencies. Under the Department's current practices, fees for the program are only assessed to LEAs that are enrolled in the program (receiving supplies and equipment within the program year). Law enforcement agencies participating in the program (LEAs with supplies and equipment that requires tracking) are not charged a fee. The amount of the fee, to whom it applies and the structure of the fees are a departmental decision.

Given that the Legislature determined that the program should be partially supported by program revenues in the 2017-19 biennium, it could be argued that GPR supplementation by the Committee may be contrary to that directive. Further, since the request is for 2018-19, questions may be raised as to whether an emergency currently exists under the statutory constraints of s. 13.101. In addition, while DMA indicates that revenue will not be sufficient to support the budgeted funding for 2018-19, the Department currently has the ability to modify the fee structure to support the program as necessary. Lastly, it appears that if revenues remain relatively consistent to prior years and expenditures for the program are modified by departmental management to budgeted amounts by approximately \$1,100 over the year, revenues may be sufficient to support

the program in 2018-19. Given these considerations, the Committee could deny the request. [Alternative 4]

As an alternative to approving the Department's request or denying the request altogether, consideration could be given to creating 1.0 permanent PR position for the program. [Alternative 3] Under this alternative, the Department would be required to keep program expenses within the existing budget authority established in Act 59 (\$80,200 PR annually). If revenue was generated as in prior years, funding would generally be sufficient to support the position in 2018-19. Creation of a permanent position would address the Department's concerns regarding position retention and program continuity. Funding and staffing of the program could be further addressed in the 2019-21 biennial budget.

ALTERNATIVES

1. Approve the Department's request that the current 1.0 PR project position be converted to 1.0 GPR permanent position in 2018-19 associated with the military property program. In connection with the funding source conversion, reduce PR funding by \$80,200 in 2018-19, and transfer \$80,200 GPR from the Committee's GPR supplemental appropriation to DMA's appropriation for emergency management services.

2. Create 0.75 GPR and 0.25 PR permanent position to administer the military property program funded at \$60,100 GPR [transferred from the unreserved portion the Committee's appropriation and an increase of \$20,100 PR in 2018-19. Further, delete 1.0 PR project position created in Act 59 and \$80,200 PR in 2018-19. *[The net result of this alternative would be an increase of \$60,100 GPR and 1.0 GPR position in appropriation s. 20.465(3)(a) and a decrease of \$60,100 PR and 0.75 PR position in appropriation s. 20.465(3)(g) in 2018-19.]*

3. Create 1.0 PR permanent position to administer the military property program. Delete 1.0 PR project position created in Act 59 for the program.

4. Deny the request.

Prepared by: Jere Bauer