



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #641

### **Expand Flood Damage Aids Program to Include Other Disasters (DOT -- Local Transportation Aid)**

[LFB 2013-15 Budget Summary: Page 456, #3]

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#### **CURRENT LAW**

The Department of Transportation (DOT) administers a flood damage aids program funded from a sum sufficient appropriation with base level funding of \$600,000 SEG. The program provides assistance to local governments with replacing or improving roads and roadway structures that had major damage caused by flooding, by providing help to defray the costs of repairing any public highway, street, alley, or bridge not located on the state trunk highway system.

#### **GOVERNOR**

Rename the flood damage aids program the disaster damage aids program, increase estimated funding by \$400,000 SEG annually from the program's sum sufficient appropriation, and allow the Department to make aid payments for highway damage caused by any disaster. The estimated amount of funding to be expended annually from the sum sufficient appropriation would increase from \$600,000 to \$1,000,000. Specify that the Department may not pay aid under the program in excess of \$1,000,000 in connection with damages resulting from a single disaster, unless the payment is approved by the Governor.

Define disaster as any of the following: (a) a severe storm, flood, fire, tornado, mudslide, or other natural event external to a highway or a catastrophic highway failure; or (b) an event or recurring damage caused by any governmental unit or person acting under the direction or approval of, or permit issued by, any governmental unit in response to a disaster event. Define "catastrophic highway failure" as the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway, but specify that the term does not

include any failure primarily attributable to gradual and progressive deterioration or lack of proper maintenance of a highway. Specify that a "governmental unit" would include the state, or any state agency, or any county, city, village, town, or other political subdivision of the state, or the federal government or any of its agencies. Replace the term "flood" with "disaster" in the existing program's appropriation and statutes, renumber the program statutes, and amend cross references to reflect the statutory renumbering.

Clarify that for the purposes of estimating damages and determining aid payments, the Department would be required to determine the cost of the repairs to, or replacement of, a highway facility to the standards that "existed immediately before" the damage or destruction of the facility. Current law requires that the Department consider the standards that "previously existed."

Specify that if a disaster involves an event or recurring damage caused by any governmental unit or person acting under the direction or approval of, or permit issued by, any governmental unit in response to a disaster event, the disaster aid payment would equal 70% of the cost of repair or replacement of the highway facility to standards similar to those existing immediately before the damage or destruction. No disaster aid payment could be made under such disaster claims for the additional cost incurred to reconstruct the highway facilities to a higher standard. For all other disasters, and similar to the current law provision for flood damages, the disaster aid payment would equal 75% of the cost of repair or replacement of a highway facility to standards similar to those existing immediately before the damage or destruction plus 50% of the increased cost of reconstruction to a higher standard. A separate provision, for cases in which the Department determines the cost of repair or improvement of a highway due to a disaster is \$15,000 or less, would be modified in a similar fashion to establish 75% and 70% payment rates for the two types of claims.

Define "highway" under the modified program to mean all public ways and thoroughfares and bridges on the same that are not on the state trunk highway system. The definition includes: (a) the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel; (b) those roads or driveways in the state, county, or municipal parks and in state forests, which have been opened to the use of the public for the purpose of vehicular travel; and (c) roads or driveways upon the grounds of public schools and institutions under the jurisdiction of the county board of supervisors. The definition does not include private roads or driveways. The current program applies to any public highway, street, alley, or bridge not on the state trunk highway system.

Specify that these provisions would first apply to disasters occurring on July 1, 2011, for disasters relating to an event or recurring damage caused by any governmental unit or person acting under the direction or approval of, or permit issued by, any governmental unit in response to a disaster event. Specify that these provisions would first apply to all other disasters that occur on the effective date of the bill.

## DISCUSSION POINTS

### Program Funding

1. The flood damage aid program was established in 1943. The program assists local governments with replacing or improving roads and roadway structures that have had major damage caused by flooding, by providing aid to defray the costs of repairing any public highway, street, alley, or bridge not located on the state trunk highway system. Within 60 days of the date of the flood, a county highway committee or the governing unit having jurisdiction over road maintenance may apply for flood damage aids by submitting a petition to DOT. If it appears that federal disaster aid may be forthcoming, the Department may extend the 60-day petition deadline. An applicant must submit final costs within two years of the flood damage.

2. For road damages to be eligible, the road must have been closed or rendered impassable due to a flood. However, water over the road closing it does not automatically make the resultant damages eligible. A closed road is defined as damages that prevent any vehicle from traveling safely through the affected area, which could be a total washout of pavement or a road or a partial washout due to pavement undermining. A road is considered impassable when a non-four wheel drive vehicle cannot safely travel through an affected area. A local government authority should have officially closed the road when practical.

3. On claims over \$15,000, an applicant may receive 75% of replacement costs, plus 50% of the increased cost of the reconstruction to a higher standard or the improvement of any of the facilities. On claims of less than \$15,000, the applicant has the option of accepting payment equal to 75% of the total amount of the Department's estimate or submitting final costs and receiving payment as calculated for claims greater than \$15,000. If federal aid is granted for damage to a particular facility, the federal aid shall be in lieu of flood damage aids.

4. The flood damage aid program is funded from a sum sufficient segregated, transportation fund appropriation. The base level funding provided the program is \$600,000. However, the program can expend an amount sufficient to pay all approved damage claims submitted in a given year. The following table provides a 10-year history on the number and amount of flood damage aid claims. It is estimated that claims could total up to \$870,000 in 2012-13.

### Flood Damage Aid Claims

<u>Fiscal Year</u>	<u>Number of Claims</u>	<u>Claims Paid</u>	<u>Average Claim</u>
2002-03	46	\$789,818	\$17,170
2003-04	23	493,989	21,478
2004-05	30	919,181	30,639
2005-06	29	374,808	12,924
2006-07	23	611,769	26,599
2007-08	12	139,455	11,621
2008-09	10	1,395,491	139,549
2009-10	16	352,781	22,049
2010-11	54	1,313,278	24,320
2011-12	<u>69</u>	<u>2,544,789</u>	36,881
Total/Average	312	\$8,935,359	\$28,639
Annual Average	31.2	\$893,536	

5. The flood damage aids program has overspent the \$600,000 in base level funding in six of the 10 years listed in the table, and will likely overspend the base funding amount in 2012-13. In those years, the amount expended over the base amount has ranged from \$11,769 (2.0%) to \$1,944,789 (324.1%). Over the 10-year period, the program paid an average of \$893,536 in claims, while over the past five years, it averaged \$1,149,159 in claims paid. DOA indicates that a funding level of \$1,000,000 is being recommended because it is more in line with what the state has actually been spending on the existing flood damage aids program. The funding increase under the bill is effectively a reestimate of the funding needed to meet the current program's needs (Alternative A1)

6. Under the bill, the program would be expanded to include other natural disasters, which would include an event or recurring damage caused by any governmental unit or person acting under the direction or approval of, or permit issued by, any governmental unit in response to a disaster event. DOT indicates that they have not completed an estimate of the additional claims that could occur as a result of the expanded purpose of the program. They note that the timing and scope of any such damage is highly unpredictable.

7. The proposed expansion of the program would be retroactive to disasters occurring on July 1, 2011, for disasters relating to an event or recurring damage caused by any governmental unit or person acting in response to a disaster event. The retroactive effective date would allow DOT to make aid payments for damages to highways incurred in response to major storms that occurred in Burnett, Douglas, and Washburn counties on July 1, July 19, and August 1, 2011. The damage occurred as trucks and other equipment used local roads in a timber salvage operation pursuant to Executive Order #40, issued by the Governor on August 23, 2011. The damage from the event was not declared a federal disaster area. Therefore, no federal aid was made available.

8. Under the bill, the Department may not pay aid under the program in excess of \$1,000,000 in connection with damages resulting from a single disaster, unless the payment is approved by the Governor. Damage estimates for the 2011 disaster event are still being finalized, but preliminary figures total about \$14 million. At 70%, this could generate aid payments of \$10 million, provided the Governor approves, since the cost exceeds \$1 million. To the extent that the \$14 million figure includes any costs associated with improving the highway facilities to a higher standard, the \$10 million potential aid payment total would be reduced. Since the appropriation is a sum sufficient, the \$1,000,000 annually estimated in the bill is not limiting. Any aid paid in excess of the bill's estimates would reduce the transportation fund balance. The attachment to this paper lists the preliminary cost estimates submitted to DOT by the affected counties and municipalities, as well as aid at 70% of those amounts.

9. Under the Governor's recommendations relating to the flood damage aid program expansion, expenditures from the transportation fund could be up to \$10 million higher than is currently reflected in the fund condition. The amount that could be expended on the 2011 disaster was not reflected in the sum sufficient appropriation under the Governor's budget recommendations. However, when the budget was submitted, the administration estimated that the transportation fund would end the 2013-15 biennium with a fund balance of \$12.6 million, an amount sufficient to fund the potential claims. Subsequently, in LFB Paper #635, this office reestimated transportation fund revenues and expenditures. Based on those reestimates and the Committee's actions to date, the estimated balance at the close of the biennium is -\$54.4 million.

10. DOT indicates that due to the poor weather this spring in the affected counties, completion of the removal of the downed timber has been delayed, and thus the local road repair has been delayed as well. At this time, it is estimated that much of the significant road work could be delayed until this fall, which could push claims to late 2013-14 and well into 2014-15.

11. Given the unknowns related to the timing and size of claims associated with the 2011 disaster event, it is difficult to estimate the level of expenditures that could occur from the sum sufficient appropriation in each year of the biennium. Similar to the Governor, the Committee could make changes to either transportation fund revenues or expenditures necessary to budget for an ending balance that is sufficient to pay the potential claims for this event.

### **Expansion of Program**

12. Expanding the program to include other natural disasters could result in higher payments from the program going forward. However, according to the Department, most disaster-related damage done directly to roads occurs due to flood-related disasters. Downed trees on roadways as a result of a tornado, wind storm, or ice storm generally do not do much direct damage to the road structures. However, the response or removal of the downed trees, similar to the 2011 disaster event, can cause damages.

13. The Department of Administration indicates that in developing this proposal, it was believed that expanding the proposal to include additional types of disaster would be useful because other events, like the 2011 disaster event, will likely occur in the future.

14. The purpose of a program such as the existing flood damage aid program or the expanded disaster aid program is to spread the cost of responding to unpredictable, but costly events among a large group of taxpayers rather than having the entire cost be borne by the area affected by the flood or other disaster. The cost-sharing under the program requires the local government to bear part of the cost of the damage, while spreading a larger share to the state as a whole. Although rare, very costly events, such as the 2011 storms, may be viewed by some as the type of event most needing state assistance. From this viewpoint, there may be little difference between damages due to the disaster itself and these due to a response to the disaster, which would be consistent with the Governor's proposal (Alternative B1).

15. Others may make a distinction between damages caused by the disaster itself and those caused by the response to the disaster, arguing that while disasters are unpredictable and uncontrollable, the response is determined by decisions made by government officials and others. In order to maintain greater control over potential expenditures in the future, those making this distinction may argue that in order to receive state assistance, the response would have to be under the direction or approval of, or permit issued by, the state or a state agency (Alternative B2). The timber salvage operation pursuant to Executive Order #40 for the 2011 storms would be consistent with this alternative.

16. The potential cost to the transportation fund may cause some to be concerned with the proposed expansion. Although the state's resources are more extensive than those of local governments, the state has traditionally budgeted the transportation fund with minimal balances. Large, unexpected expenditures may therefore be somewhat difficult to accommodate once a budget has been prepared. As mentioned earlier, if the Committee decides to approve the expansion and its retroactive application to the 2011 storms, a sufficient balance could be retained in this budget to accommodate the potential payments. Alternatively, if the Committee decides that available transportation fund resources are insufficient to support the proposed expansion, the Committee could establish a transfer from the general fund for costs exceeding \$1 million from a single disaster event (Alternative B3) or could delete the Governor's recommended expansion, either as it applies to new types of disasters (Alternative B4a) or to damages incurred in responding to a disaster (Alternative B4b).

### **Approval of Expenditures Over \$1 Million**

17. The Governor's recommendation would prohibit the Department from paying aid under the program in excess of \$1,000,000 in connection with damages resulting from a single disaster, unless the payment is approved by the Governor (Alternative C1). This provision would allow the administration to review whether sufficient funding is available to both make the payment and meet the other demands on the transportation fund in a given year.

18. Given the concerns related to timing and costs of potential claims related to the 2011 disaster event, and the other demands facing the transportation fund, Committee members may also have a concern about the amount of funds the state could pay for that disaster event and similar costly events in the future. The Committee could require DOT to submit any payments totaling over \$1 million for a single event that have been approved by the Governor to the Committee for its approval under a 14-day passive review process before those payments could be made. This would

inform the Legislature that the Governor has approved such a claim prior to that claim being paid, and would allow a legislative committee to analyze the claim and whether funding is available to make the payment (Alternative C2).

**ALTERNATIVES**

**A. Program Funding**

1. Approve the Governor's recommendation to provide \$400,000 SEG annually to reflect a reestimate (at \$1,000,000 annually) of the amount of claims that would be paid from the sum sufficient appropriation in the biennium.
2. Delete the Governor's recommendation.

ALT A2	Change to Bill Funding
SEG	- \$800,000

**B. Program Expansion**

1. Approve the Governor's recommendation to expand the purpose of the disaster aids program to allow for the payment of damage aid on natural disasters other than just flood-related disasters. Adopt the Governor's recommended program definitions, eligible claims, and cost share percentages relating to damage claims, including the provision that would allow the program to pay certain claims retroactive to July, 2011.
2. Modify the Governor's recommendation by limiting damage aid payments for damage caused in response to a disaster event to those cases in which the response was made under the direction or approval of, or permit issued by, the state or a state agency (this would preclude payment in cases where the damage was caused by actions taken under the direction or approval of, or permit issued by, a county, municipality, other political subdivision of the state, or the federal government or any of its agencies).
3. Modify the Governor's recommendation by establishing a sum sufficient transfer appropriation from the general fund to the transportation fund in the second year of each biennium equal to the amount of disaster aid payments made in that biennium in excess of \$1 million for any single disaster event. Estimate this transfer at \$9,000,000 GPR in 2014-15 and increase estimated transportation fund revenue in 2014-15 by the same amount.

	Change to Bill	
	Revenue	Funding
GPR		\$9,000,000
SEG-REV	\$9,000,000	

4. Delete the Governor's recommendation to expand the flood damage aid program to include damages:

a. from severe storms, fires, tornados, mudslides, other natural events external to a highway, or catastrophic highway failures; and/or

b. caused by any governmental unit or person acting under the direction or approval of, or permit issued by, any governmental unit in response to a disaster event, including any disaster event occurring on or after July 1, 2011.

**C. Approval of Claims in Excess of \$1 Million for a Single Disaster Event**

1. Approve the Governor's recommendation that the Department may not pay aid under the program in excess of \$1,000,000 in connection with damages resulting from a single disaster, unless the payment is approved by the Governor.

2. Modify the Governor's recommendation to prohibit the Department from paying aid under the program in excess of \$1,000,000 in connection with damages resulting from a single disaster, unless the payment is approved by the Governor and the Joint Finance Committee under a 14-day passive review process.

3. Delete the Governor's recommendation (DOT could make the payment without any additional approval).

Prepared by: Al Runde  
Attachment



## ATTACHMENT

### Potential Recipients and Costs of Disaster Aid for 2011 Disaster Event

<u>County/Municipality</u>	<u>Estimated Total Emergency Repair Costs*</u>	<u>Estimated Disaster Damage Aids Amount Needed Under AB 40</u>
<b>Burnett County</b>	\$464,707	\$325,295
Town of Grantsburg	50,625	35,438
Town of Jackson	96,897	67,828
Town of Lincoln	713,092	499,164
Town of Meenon	896,465	627,525
Town of Oakland	179,058	125,341
Town of Sand Lake	886,801	620,761
Town of Scott	400,950	280,665
Town of Siren	818,371	572,860
Town of Swiss	495,340	346,738
Town of Union	1,004,754	703,328
Town of Webb Lake	1,225,225	857,658
Town of West Marshland	<u>112,782</u>	<u>78,948</u>
Subtotal	\$7,345,067	\$5,141,549
<b>Douglas County</b>	\$4,681,008	\$3,276,706
Town of Dairyland	6,328	4,430
Town of Wascott	<u>3,848</u>	<u>2,693</u>
Subtotal	\$4,691,184	\$3,283,829
<b>Washburn County</b>	\$2,135,613	\$1,494,929
Town of Brooklyn	6,328	4,430
Town of Chicog	<u>94,922</u>	<u>66,445</u>
Subtotal	\$2,236,863	\$1,565,804
<b>Total</b>	<b>\$14,273,114</b>	<b>\$9,991,182</b>

\*Preliminary cost information submitted to DOT.