



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 s. 13.10 Request for Emergency Management Volunteer Worker's Compensation Costs -- Agenda Item II

REQUEST

The Department of Military Affairs (DMA) requests a one-time transfer of \$251,500 GPR in 2012-13, from the Joint Committee on Finance's s. 20.865(4)(a) supplemental appropriation to the Department's s. 20.465(3)(a) Emergency Management Services' general program operations appropriation, for emergency management volunteer worker's compensation costs associated with an injury sustained by a volunteer on May 13, 2000 in Manitowoc County.

BACKGROUND

Claim History. According to DMA, "On May 12, 2000, severe thunderstorms and high winds struck Manitowoc County and caused significant property damage in several locations, particularly the Village of St. Nazianz. Beginning on Saturday, May 13, the Manitowoc County Sheriff's Department, in conjunction with Manitowoc County Emergency Management, recruited volunteers to assist in clean-up and debris removal. The Manitowoc County Sheriff's Department duly registered volunteers."

According to the findings of fact in the case by an Administrative Law Judge:

"On May 13, 2000, applicant was cutting up a tree that had tipped over during a storm. The tree had a large exposed rootball, and the trunk was under tension. Applicant was straddling the trunk of the tree as he used a chain saw to cut off a large limb. As he completed the cut, the portion of the trunk that he was straddling suddenly sprang back up due to the weight of the rootball. Applicant was thrown through the air approximately 30 feet and landed on his low back and butt."

On May 14, 2000, and again on May 19, 2000, the injured volunteer underwent spinal surgery. Upon his discharge from the hospital on May 27, 2000, the injured volunteer still suffered back pain. As a result, he was prescribed physical therapy. "In late August 2000, however, the physical therapy was discontinued because applicant was complaining of increased back pain. His symptoms persisted."

In addition, according to DMA:

"After a series of surgeries and a lengthy healing period, the injured volunteer returned to working full time in June 2001. Despite successfully returning to work, the injured volunteer's physical condition steadily deteriorated due to the injuries that he sustained on May 13, 2000. Unfortunately, the injured volunteer has not worked since June 7, 2007 and filed a claim for permanent total disability with the Department of Workforce Development, Worker's Compensation Division. After a series of hearings in 2011 on the claim for permanent total disability, an Interlocutory Order and Decision was issued on March 5, 2012 by an Administrative Law Judge finding that the injured volunteer is permanently totally disabled. This Interlocutory Order and Decision awards monthly disability payments to the injured volunteer for life, attorney fees, lump sum payments for outstanding medical bills as well as payment for future medical costs and medications."

State Law. Under state statute, an individual who registers in writing with a local unit of government's emergency management program to provide his or her labor without compensation during a disaster is considered to be an employee of the local unit of government for purposes of worker's compensation for any claim relating to the labor provided. The local unit of government is initially liable for any worker's compensation payments owed to any such volunteer. If in the initial calendar year, however, the worker's compensation costs incurred by the local unit of government exceed \$1 per capita of the local unit of government's population, the state must reimburse the local unit of government for the amount of worker's compensation costs that exceed this amount. If the state provides reimbursement to a local unit of government in the initial calendar year of the incident, the state must also reimburse the local unit of government for all future worker's compensation costs incurred with respect to the volunteer's worker's compensation claims. As a result, the state remains liable under state statute for reimbursing Manitowoc County for payment of the ongoing worker's compensation claims of the volunteer who was injured in Manitowoc County on May 13, 2000.

ANALYSIS

On March 5, 2012, a Department of Workforce Development (DWD) administrative law judge (ALJ) ruled that the Manitowoc County volunteer injured on May 13, 2000, was now permanently and totally disabled as a result of the 2000 accident. As a result, under state statute applicable to volunteer emergency workers, Manitowoc County is responsible for worker's compensation payments. Under statute, DMA is required to reimburse affected local units of government for worker's compensation costs for injured volunteer emergency workers (less an amount equal to \$1 times the local unit of government's population in the initial calendar year of

the incident, or for Manitowoc County in 2000, \$84,727). Since the onset of the Manitowoc County claim the Joint Committee on Finance has provided \$218,000 GPR to DMA to reimburse Manitowoc County for worker's compensation benefits paid to the injured volunteer. The last payment made by DMA from these amounts was in February, 2008, for claims that occurred in 2005. No payments have been made for claims since February, 2005. Rather, Manitowoc County has been paying the costs and submitting reimbursement claims to DMA for payment subsequent to the settlement of legal proceedings.

The Department's request provides for a lump sum payment (\$233,804) and initial monthly disability payments (\$17,708) in accordance with the ALJ's decision. However, a subsequent review identified that \$271,082 should have been requested as a part of the lump sum payment. A payment of \$37,278 from DMA to Manitowoc County on August 14, 2000, was erroneously credited to reduce the reimbursement owed to Manitowoc County for health care expenditures incurred since February, 2005.

These costs (including the updated lump sum payment amount) are identified in the following table. The monthly disability payment for the injured volunteer (\$1,089.70 per month) is for life, and the repayment of the volunteer's attorney (\$272.44 per month) is for a period ending April 6, 2016, or for as long as the injured volunteer lives, whichever is shorter. These costs are specified in the ALJ's order. The disability payments identified in the table below are those payments expected to occur in the 2011-13 biennium. The Department indicates that claims payments for future years will be addressed in subsequent biennial budget requests.

**Breakdown of Emergency Management
Volunteer's Worker's Compensation Costs**

	<u>Amount</u>
Lump Sum Payment	
Health care	\$125,175
Disability payments	83,333
Attorneys' fees	30,919
Mileage/Medical	18,963
Surveillance	7,186
Audit expenses	<u>5,506</u>
Total lump sum	\$271,082
 Disability Payments in 2011-13	
Volunteer (\$1,089.70 per month)	\$14,166
Injured volunteer's attorney (\$272.44 per month)	<u>3,542</u>
Total monthly disability payments in 2011-13	\$17,708
 Total	 \$288,790

To the extent that further medical bills are received by Manitowoc County in addition to the amounts identified above, DMA has indicated that these costs will need to be addressed by the

Department. The request currently before the Committee only addresses claims costs that are known at this time.

The Department's Emergency Management Services' general program operations appropriation is budgeted at \$813,700 GPR in 2012-13, with 8.88 positions. The appropriation provides state administrative and coordination support for state and federal emergency services provided in Wisconsin. The payment of the Manitowoc County volunteer's worker's compensation claim was not a budgeted cost for DMA in 2011-13. As such, the Department is requesting that the Committee provide a supplement from its supplemental appropriation under s. 20.865(4)(a).

The Committee's GPR supplemental appropriation is a biennial appropriation. Thus, amounts provided may be expended over the biennium. The appropriation's current balance of \$6,084,700 in 2011-12 and \$14,582,500 in 2012-13 consists of a reserved and unreserved portion. The reserved portion (\$5,951,100 in 2011-12 and \$14,448,900 in 2012-13) represents funding set aside by the Legislature for release for various specific purposes. The unreserved amounts (\$133,600 GPR annually) may be used for emergency supplements that may be necessary during the biennium.

The Department's original request would be funded from the unreserved portion of the Committee's supplemental appropriation. Funding of DMA's original request would reduce the unreserved balance to \$15,700 GPR for the remainder of the 2011-13 biennium. [Alternative 1] However, the unreserved portion of the Committee's supplemental appropriation would be insufficient to fully fund the worker's compensation costs of \$288,790 currently owed to Manitowoc County.

The Committee should note that the Legislature reserved \$10 million GPR for potential security costs at the State Capitol in 2011. Of that total, \$9,155,700 has been utilized (\$8,155,700 for incurred Capitol security costs and \$1,000,000 to lapse to the general fund in accordance with a plan approved by the Committee on February 15, 2012). The cumulative effect of these actions is that \$844,300 GPR remains reserved for Capitol security costs. No future releases of funds associated with Capitol security costs in 2011 are anticipated. As such, instead of releasing funds from the unreserved portion of the appropriation, the Committee may wish to direct that \$288,800 in funding be provided from the Capitol security reserve. [Alternative 2]

ALTERNATIVES

1. Approve the Department of Military Affairs' request to transfer \$251,500 GPR in 2012-13, on a one-time basis from the unreserved portion of the Committee's GPR supplemental appropriation (s. 20.865(4)(a)) to DMA's Emergency Management Services' general program operations appropriation (s. 20.465(3)(a)) to offset worker's compensation costs associated with the injury of an emergency management volunteer in Manitowoc County sustained on May 13, 2000.

2. Transfer \$288,800 GPR in 2012-13, on a one-time basis from the reserved portion of the Committee's GPR supplemental appropriation (s. 20.865(4)(a)) for Capitol security costs in

2011 to DMA's Emergency Management Services' general program operations appropriation (s. 20.465(3)(a)) to offset worker's compensation costs associated with the injury of an emergency management volunteer in Manitowoc County sustained on May 13, 2000.

3. Deny the request.

Prepared by: Paul Onsager