

W. Q. A.

**FILE NOTE**

Note Date: 23 July 2007

Agenda Title: In the Matter of Applying for and Accepting State Funding in the amount of \$127,398 to Continue Expansion and Enhancement of County Veteran Services Pursuant to ORS 406.450-.462 and Senate Bill 5541 and to Establish a New Temporary Assistant Veteran Services Coordinator Position and to Appropriate \$18,394 in Revenue and Expenditures to Fund this Temporary Assistant Veteran Services Coordinator Position

Agenda Date: 25 July 2007

From: Trina Laidlaw, Assistant County Counsel

---

The purpose of this file note is to highlight the potential consequence of the Board approving this agenda item. There is a "maintenance of effort" string which is attached. This may affect any future mid-year Board discussion/decision about budget reductions for this program in relation to other county programs. There also may be other county programs with such a string which the Board may consider for budget reductions.

Not all grants have "maintenance of effort" provisions, and there are various forms of these provisions, used solely or in combination with others, depending upon the program and funding source. One approach is to prohibit the grant funds from being used to supplant (or replace) other monies otherwise appropriated by the agency for the program. Another approach is to specify that a certain level of fiscal commitment by the recipient be maintained, such as: 1) Recipient shall maintain the same level of spending on the program as in the prior fiscal year, or 80% of the prior year, or the average of the last three years. Another variation is to place a restriction on the level of any budget reduction for a program. Both a supplanting and budget reduction restriction is present for the Veterans' Services expansion and enhancement funds covered by this agenda item.

Maintenance of Effort Provision

Lane County receives, commits and utilizes funds from several funding sources for its Veterans' Services program: City of Eugene, City of Springfield, state Veterans' Affairs Department, through the state "Aid to Counties" program, as well as county general funds. The purpose of the agenda item is to request the Board's approval for the state Veteran's Affairs Department 2007-08 fiscal year portion. The "maintenance of effort" issue for the Veterans' Services program is raised by ORS 406.460(1) and (2) (a) which provide:

(1) A county that receives funds for the enhancement and expansion of services from the state Department of Veteran's Affairs may not use the funds to supplant monies appropriated by the county for county veterans' service officers.

(2)(a) Notwithstanding this supplanting restriction, if the county reduces appropriations to county programs, it may reduce the amount appropriated for county veterans' services officers by an amount not greater than the average percentage reduction imposed on all county programs for the same period of time.

Another provision requires a county which makes mid-year reductions, including to its Veterans' Services program, to certify to the Director of Veterans' Affairs that this provision has been complied with. Thus, it becomes important how the state Department of Veterans' Affairs interprets the maintenance of effort provision with regard to a county's mid-year budget reduction considerations.

#### Application of Maintenance of Effort Provision

There are likely to be questions concerning how to apply the maintenance of effort provision, how to calculate reductions, and how the reduction comparison should be made. For example:

1. While not finally settled, Lane County will probably be entitled to use "carry over", or extra unspent funds, from the 2005-07 biennium appropriation. How will these funds be treated?

2. How will the funds through the Human Services Commission be treated, including those from the City of Eugene and the City of Springfield, and through the "Aid to Counties" program?

2. How is the reduction in the "amount appropriated for county veterans' services officers" calculated?

3. How is the "percentage reduction imposed on all county programs calculated"?

There are also likely to be questions concerning the remedy options the state Department of Veterans' Affairs considers appropriate if it determines that a county's budget reduction decision violates the statute. The statute is silent on remedies. For example:

1. The state Department would likely no longer provide the expansion and enhancement funds for the remainder of the 2007-08 fiscal year after the Board's budget reduction decision.

2. Would it also require a refund of all funds it provided to the county before its budget reduction decision and during the 07-08 fiscal year? These would likely be funds that had already been appropriately spent on veterans' services.

a. Or, would it require that only an amount equal to the amount exceeding the "average percentage imposed on all county programs" be refunded?

3. If a refund is requested, how and when would it require the county to refund the funds? Would it require immediate payment, a payment schedule, or would it withhold funds from a future appropriation?

## Conclusion

The purpose of this file note is not to recommend that the Board not approve this agenda item, rather to highlight the potential consequences of doing so given some interest by Commissioners to have the Board discuss mid-fiscal year budget reductions, including to this program. There are a number of questions listed above which could be better clarified with the state Department of Veterans' Affairs. The advisable approach is to reach an understanding with this state Department in which both parties agree that the county's reduction decision complies with the maintenance of effort statute. From a legal perspective, it is arguable that the Oregon Legislature may have intended some form of refund if a county were to fail to comply with the maintenance of effort provision in ORS 406.460. However, we would likely oppose any additional payment to the Department which exceeds the amount necessary to compensate for the loss under the statute, and is rather a "penalty" (ie, statute contemplates the county's ability to reduce the budget for the Veterans' Services program to a certain level. A refund that exceeds that level may be such a penalty.) It is our understanding that this state Department may want to withhold future funds as a remedy. The Board may want to consider budgeting funds to pay "this debt" in that future year's budget process. Please consider the maintenance of effort string to approval of this agenda item today, and the potential consequences to any mid-year budget discussions.