

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.8 Name of Bill: An act relating to the oversight of the transfer of military equipment to law enforcement agencies.

Agency/Dept: DPS Author of Bill Captain Tim Clouatre
Review: _____

Date of Bill Review: 1/23/15 Related Bills and Key Players: DPS/AG

Status of Bill: (check one)

Upon Introduction As passed by 1st body As passed by both bodies

Recommended Position:

Support Oppose Remain Neutral Support with modifications identified in # 8 below

Analysis of Bill

1. Summary of bill and issue it addresses.

This bill proposes to authorize the Attorney General to oversee the transfer of military equipment to State and local law enforcement agencies pursuant to the federal program established in 14 10 U.S.C. § 2576a.

2. Is there a need for this bill?

No there is no need for this bill. The Law Enforcement Support Office (LESO) 1003 program had been administered by the Vermont National Guard until January 27, 2015. The Guard was not able to continue to administer the program and contacted the Vermont Department of Public Safety to administer it.

On January 7, 2015 Governor Shumlin appointed Keith Flynn, Commissioner of the DPS to serve as the State Coordinator for the excess property program established by United States Code, Title 10, Section 2576a, and implemented by the United States Secretary of Defense. As State Coordinator Commissioner Flynn is authorized to enter into, execute and otherwise monitor and implement agreements with the Secretary of defense Logistics Agency and law enforcement agencies that pertain to the excess equipment program.

I contacted Representative Ancel who introduced this bill and requested her to call me back to discuss this bill and she did not respond to me. I also spoke with General Heston at the Guard and he advised that he had spoken to Ancel and other representatives and advised that he felt this was taken care of and also that the AG office did not want to administer this program.

(LESO), facilitates the 1033 program, which originated from the National Defense Authorization Act of Fiscal Year 1997 (FY 97). This law allows transfer of excess Department of Defense property that might otherwise be

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destroyed to law enforcement agencies across the United States and its territories.

No equipment is purchased for distribution. All items were excess which had been turned in by military units or had been held as part of reserve stocks until no longer needed.

Since its inception, the 1033 program has transferred more than \$5.1 billion worth of property. In 2013, \$450 million worth of property (based on initial acquisition cost) was transferred to law enforcement agencies.

Requisitions cover the gamut of items used by America's military -- clothing and office supplies, tools and rescue equipment, vehicles, rifles and others small arms. Of all the excess equipment provided through the 1033 program, only five percent are weapons and less than one percent are tactical vehicles.

More than 8,000 law enforcement agencies have enrolled in the program.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

By taking this program over the DPS is now responsible for this program and any associated costs that pertain to conferences, training sessions, and inventories, etc. This bill proposes to allow the Attorney General to administer the program.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

Whichever agency administers the program will be responsible for the costs associated with it. Programmatic implications for the bill will be an increase of work hours to administer the program. I speaking with counterparts from the NHSP, I learned that there is a learning period that needs to take place and that the hours spent on this program will be significant. Currently the NHSP has a Captain and 3 Sergeants working on the LESO 1033 program and advised it is a very time consuming program to administer.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

Agencies that are currently enrolled in the program and agencies that join will be required to request items as needed which will be approved by the State point of contact based on identified training to determine if they are permissible. Agencies will be required to have both RTD and FEPMIS access to control their request and inventory. Fiscal implications for the agencies will be that they can receive surplus equipment at little to no cost and save the State or municipality money.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Law Enforcement agencies.

6.2 Who else is likely to oppose the proposal and why? The Legislature may not want DPS involved with this process and require oversight by the AG office.

7. Rationale for recommendation:

There is no need for this bill as written. There are policies and procedures in place to deal with excess property and the Attorney General should have no impact on what is needed for law enforcement agencies. The LESO program is a valuable program and is not just for weapons or vehicles. This could include office equipment, snow blowers, or uniforms.

8. Specific modifications that would be needed to recommend support of this bill:

There are already policies in place for agencies to request and receive surplus equipment. There is no need for this bill.

******See attachment prepared by the Vermont National Guard legal assistant Katrina Jangraw.**

Secretary/Commissioner has reviewed this document



Date: 02/17/15

Abstract

The Vermont National Guard currently administers the federally-funded Law Enforcement Support Office (LESO) Program. The use of Guard assets is violating the intent of the program being operated by the State. On January 7th, 2015, Governor Shumlin officially delegated Authority of the LESO Program to Keith Flynn, Commissioner of Public Safety (taking effect January 27th, 2015). Since the most recent change in Authority, a Bill has been introduced to the State of Vermont requesting the LESO program be operated by the Attorney General's office. This proposal will serve as an exploration tool for determining whether the Vermont State Police should be designated to source the Governor-appointed State Coordinator for the program as well as determine any impact of the Vermont National Guard continuing to oversee the in-state administration of the LESO Program.

Introduction

The LESO Program has existed since 1990 when the 1208 Program was developed as a conduit for excess government equipment movement between the Department of Defense and Regional Law Enforcement Offices. The administration of the program was transferred to the Defense Logistics Agency (DLA) in 1999, then relocated within the Disposition Services branch of the DLA in 2009. Until 2011 the LESO Program was administered in-state through the VTNG Counterdrug Program. Responsibility with the Vermont LESO Program currently rests with the J3 (DOMS) Section of the Vermont National Guard, with assistance from the State Paralegal in the Office of the Staff Judge Advocate. The day-to-day duties are held by the Defense to Civilian Authorities planner who is able to devote 30-50% of any given workweek to a program which deserves full-time attention.

Other specific background details:

- The LESO program in Vermont currently has 38 participating Law Enforcement Agencies (LEAs), to include the Vermont State Police, local city and town Police Departments, County Sheriff Departments and the University Of Vermont Safety Office (which includes their Campus Police). 32 participating LEAs have weapons through the program.
- In Vermont, the LESO Program Point of Contact focuses on three lines of effort:
 - 1) **Customer Support** includes helping LEAs with requisitioning excess property, the management and controlling of DoD property and training assistance and strategic partner interaction.

- 2) **Program Compliance** focuses on ensuring specific parts of the State Plan of Operations between the State Coordinator and the LEA are adhered to, which is closely reviewed by Disposition Services biannually (a four-day compliance visit is conducted- Vermont was last reviewed in May 2013 and will again be reviewed in August 2015).
 - 3) **Property Accountability** involves local “property book” management and the facilitation of annual inventory requirements for certain controlled property (such as weapons and tactical vehicles).
- Currently, it is not mandated for the LESO Program Point of Contact to conduct training for weapons, though there is a possibility of this being mandated in the future. LESO Program Point of Contact is responsible for ensuring LEAs conduct training for specific pieces of equipment, as Brett Johnson, Team Lead, Western U.S. LESO states: “As of right now no training is required to be conducted by the SPOC's, individual training plans on equipment is the sole responsibility of the LEAs, however some training may be mandated by the individual State's. Bottom line is we LESO are not going to dictate how the training plan is to be written, we are saying that training must be conducted on certain items of equipment examples are MRAPS, aircraft, and other high profile vehicles”.
 - The Vermont National Guard in addition to the Connecticut and Rhode Island National Guards comprise the only military administration of the LESO Program. Other administrators include State Police (AK, CO, ID, KY, MD, MA, MT, NH, NJ, SD, VA, WV and GU), Departments of Public Safety (AL, GA, MO, NE, NY, NC, and TX), The Department of Emergency Management (CA, DE, MN, PR, and WI), Departments of Surplus Management (IN, KS, LA, MI, ND, OK, OR, UT and AS) and other State entities (AR, FL, IL, IA, OH, PA, SC, TN, WA, WY and VI). Finally, three states designate one local law enforcement agency to manage the program (AZ, ME, and NM) and one state (MI) has created a full time State funded position specifically dedicated to this program. Currently, there is no state which delegates authority to control this program to their Attorney General's Office.
 - Major End Item acquisition success with LEAs over the previous two years have included HMMWVs distributed to the Lamoille County Sheriff's Department (2); Swanton Police Department (2), Richmond Police Department (2), Manchester Police Department (4), Windham County Sheriff's Department (1) and the Bennington Police Department. The Vermont State Police had also received a Mine Resistant Ambush-Protected (MRAP) vehicle in late 2013. Several other high-value equipment pieces were available through the Camp Johnson sub-disposition site and included a Contact truck (with generator) for the Winooski Police Department and several trailers for other LESO members.

Courses of Action

1. Relocate the LESO Program to the Vermont State Police (VSP).

Pros:

- The VSP present themselves as most logical choice to run the LESO Program due to the numerous reasons as to of why the program began and continues to exist.
- The quantity of weapons and high-value item inventories required by the State Memorandum of Agreement are processes the VSP are familiar with.
- Over half the Vermont weapons currently managed within the LESO Program are those of which the VSP are in possession of
- There are currently thirteen States utilizing the State Police to operate the LESO program, including our neighbors in New Hampshire and Massachusetts. New Hampshire transitioned their program to the State Police in 2011, which may present a “lessons learned” opportunity for capture.
- VSP is geographically organized throughout the state to support each state police barrack as well as local departments which have obtained equipment. Monthly inventories can be accomplished on the local level with minimal effort.

Cons

- The VSP, like other State functions, are under financial stress and may not be willing to take on the management of such a time-consuming program.
- Recent program activity has allowed the VSP to be portrayed by print and broadcast media as a “militarizing our community” organization. Due to this, they may be reluctant to be known as the agency which provides military weapons, vehicles and other equipment pieces.

2. Relocate The LESO Program to the State of Vermont Attorney General's Office.

Pros

Cons

- The Attorney General's Office does not have a full-time resource funded by the State to administer this program; daily customer service support for the LESO Program requires a full-time administrator.
- If the Attorney General's Office takes over the program in July, 2015, they will not be prepared for the Program Compliance Review in August, 2015.
- The State Police will be fully trained on how to operate the LESO program in January, 2015, and will be mandated to put more time and effort into training another State agency, wasting state funds, if they are to take it and later pass it on to the Attorney General's Office.
- The Vermont Army National Guard is unable to maintain the program from February-July, as the Primary POC is retiring in February (the above bullet is inevitable).

3. The LESO Program remains with The Vermont Army National Guard until July, 2015.

Pros

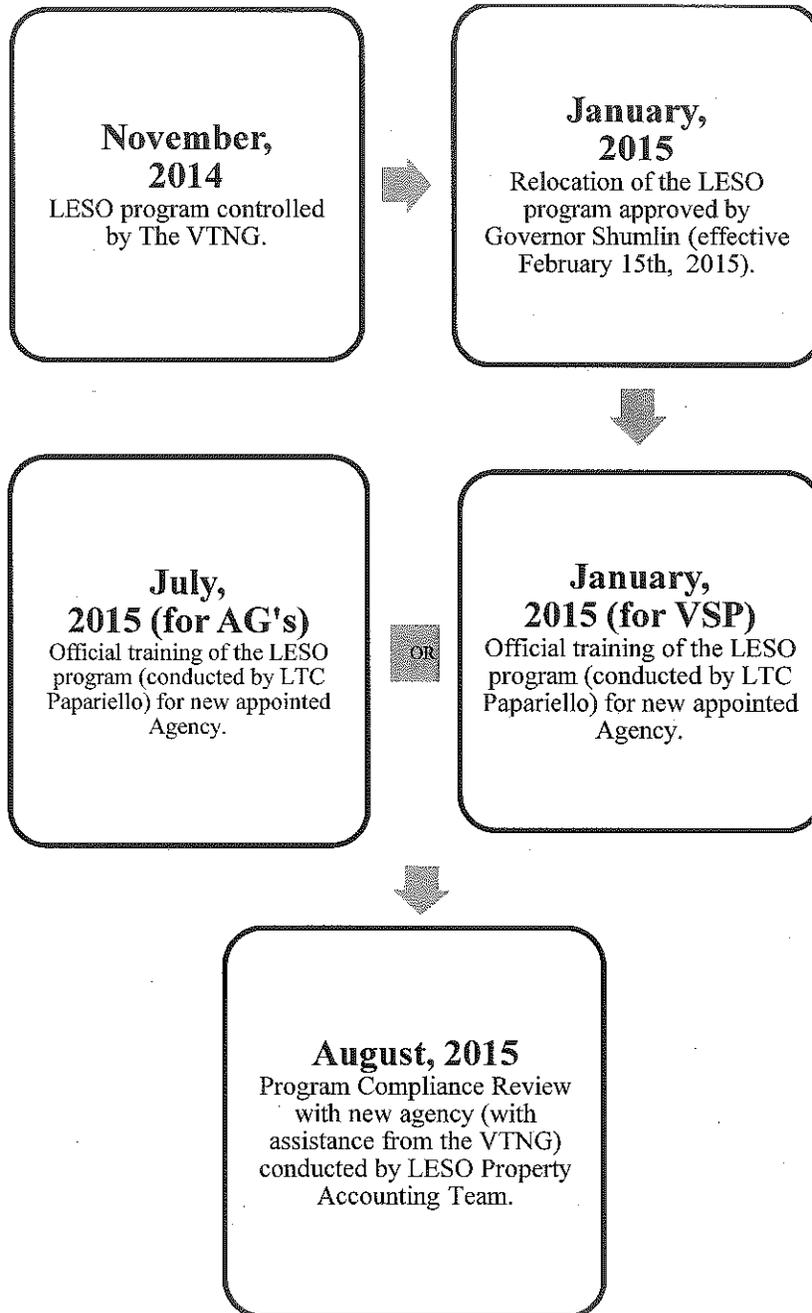
- Longevity has allowed for familiarity with the Program by participating LEAs. Both the Primary and Secondary POCs are trained on current program features and procedures.

Cons

- The Vermont National Guard does not have a full-time resource funded by the State to administer this program; daily customer service support for the LESO Program requires a full-time administrator.
- Opinion by VTNG legal and financial management officers believe the National Guard should not be administering the Program. As VTNG JAG, COL Ellen Abbott states: "Both the Vermont National Guard Chief, Legal Counsel, and the Vermont National Guard, Comptroller, have opined that the use of federal funds (i.e., personnel and equipment) to manage the LESO (1033) program is not authorized under current law and programs. Therefore, the management of the program should rest with state employees". COL Abbott assisted in the original drafting of program management procedures in the late 1990s). The Adjutant General is exposed to some measure of risk by continuing to carry responsibility for the LESO Program.

- Recent acquisitions of high-value equipment pieces through the Program places the VTNG in a potential unfavorable light with local print and broadcast media.
- The primary POC for Vermont's LESO program is retiring February, 2015.

The transition of the LESO Program from The VTNG to another agency is expected to occur as shown in the timeline displayed below:



Limitations

As stated previously, the use of federal funds to manage a State program is not authorized under current law and programs. During the annual LESO training of 2014, the attendance count was 125; 3 federal and 122 State employees.

Budget

The LESO program does approve of (but not mandate) States charging LEAs a fee for participation. If LEAs are charged, it is *suggested* that the monies collected contribute toward the funding of the State LESO coordinator position to assist in offsetting program costs. The two primary charges are as followed:

1. **Annual membership fee:** This fee is based on the number of sworn officers (full/part-time and reserves) within the LES.
 - 1-5 Officers:\$150.00
 - 6-15 Officers:\$300.00
 - 16-35 Officers:\$400.00
 - 36-50 Officers:\$600.00
 - 51+ Officers:\$900.00
2. **Shipping Costs:** LEAs requesting items may pay for the cost of shipping (only).

References

1. LESO State Plan of Operations
2. VT LEG #302708 v.2