

Allocations from the Contingency & Emergency Account

Consultation with the Joint Legislative Commission
On Governmental Operations

Office of State Budget and Management

February 21-22, 2006

Requested Allocations from the Contingency & Emergency Account

1) Treatment for Gypsy Moth Infestation in Burke, Henderson, and Clay Counties ---- \$438,500

The Department of Agriculture requests \$438,500 from the Contingency and Emergency Fund to treat approximately 28,000 acres in Burke, Henderson, and Clay Counties for gypsy moth infestation. The cost of treatment is shared equally with the US Department of Agriculture, Forest Service. The total projected cost to treat the acreage is \$877,000.

On January 4, 2005, the Council of State approved allotments totaling \$456,000 for a major treatment for infestations in Burke County. This request includes follow-up treatment for some of those areas and additional treatments in Henderson and Clay counties.

2) Legal Services for James Alan Gell v. Town of Aulander, et al. ---- \$73,298

As provided under G.S. 147-17 and on the advice of the Department of Justice, the firm of Maxwell, Freeman and Bowman, P.A. has been retained to represent Debra Graves; the firm of Cranfill, Sumner and Herzog, L.L.P. has been retained to represent William Farrell; the firm of Chesnutt, Clemmons, Thomas and Peacock, P.A. has been retained to represent Dwight Ransome; and the firm of Smith Moore, L.L.P. has been retained to represent David Hoke.

James Alan Gell, a former death row inmate, has initiated civil action in Federal Court seeking monetary damages against numerous defendants allegedly wrongfully involved in his incarceration, including current State Bureau of Investigation agent Dwight Ransome, former Assistant Attorney General David Hoke, former Assistant Attorney General Debra Graves, and former Senior Deputy Attorney General William Farrell. The Attorney General's Office has concluded that the allegations against each of these employees involve actions within the scope of their official duties, but recommended that private counsel be engaged to defend them because of conflicts of interest.

On October 26, 2005, the Joint Legislative Commission on Governmental Operations was consulted on allotments totaling \$82,418.64 for legal fees pertaining to this case.

The Office of State Budget and Management reviewed these items and recommends they be paid from the Contingency and Emergency Fund pursuant to the General Statutes.

Reporting the payment of an Order from the Industrial Commission ---- \$429,040.35

Leo DeWitt Waters received a Pardon of Innocence on August 17, 2005 after being incarcerated for 21 years and 165 days. Mr. Waters filed a claim for compensation pursuant to G.S. §§ 148-82, 148-84. The North Carolina Industrial Commission held a hearing to verify Mr. Water's eligibility for such compensation and awarded the claimant \$429,040.35 on January 6, 2006.

G.S. § 148-84 requires that if the Industrial Commission finds that the claimant received a pardon of innocence for the reason that the crime was not committed at all or not committed by the claimant and that the claimant was imprisoned, the Industrial Commission shall award the claimant \$20,000 for each year and pro rata amount for part of each year served. The statute further requires that "the Director of the Budget shall pay the amount of the award out of the Contingency and Emergency Fund, or out of any other available State funds."

The General Assembly has specifically indicated that the decisions and determinations of the Industrial Commission are final except for judicial review. As such, this matter does not have to be presented to the Council of State for its review and approval. This item is presented for the Commission's information.