

## Summary

New Mexico’s system for allocating emergency funding has not been substantially updated in decades, revealing its deficits during recent unprecedented crises. The Covid-19 pandemic in 2020 exposed significant flaws, including vague language and a lack of transparency and accountability. The Legislature’s efforts in the 2021 session to address these issues through legislation and appropriations were largely unsuccessful, with no significant reforms passed and disaster appropriations quickly exhausted.

In 2022, New Mexico faced another major challenge with an extremely destructive fire season, including the two largest wildfires in state history. Despite the Legislature's attempts to improve emergency funding mechanisms, the system encountered recurring difficulties to meet the demands of such large-scale disasters. The executive implemented some changes but continued or resumed practices to which the Legislature had previously objected.

By 2024, the situation has not improved significantly. New Mexico experienced another catastrophic fire season, leading to additional federal disaster declarations and highlighting the continuing need for comprehensive reforms to the state's emergency funding system. The issues with the existing system emphasize the need for developing new mechanisms to better prepare for future crises.

## Emergency Funding in New Mexico

**Statutory Framework.** In 1955, the Legislature created a mechanism for the executive to distribute emergency funding when waiting for legislative appropriations is impractical. The purpose of this funding mechanism is to ensure adequate state preparation to deal with disasters (such as droughts, fires, floods, and earthquakes) and “generally to protect the peace, health and safety and to preserve the lives and property of the people of the state of New Mexico.”

Sections 12-11-23 through 25 NMSA 1978 allow the governor to allocate emergency funding in increments of up to \$750 thousand for each “eligible and qualified applicant” impacted by a declared emergency the governor has deemed “beyond local control and requiring the resources of the state.” This funding is to be drawn from “surplus unappropriated money in the general fund,” undefined in statute, and refers to revenue in excess of appropriations in a given year, which is not an account available for withdrawal. Simultaneously, Section 6-4-2.3 NMSA 1978 allows for the use of the appropriation contingency fund “in the event there is no surplus of unappropriated money in the general fund and in the amount authorized by the legislature.” However, this surplus does not exist as the legislature created the operating reserve to capture all of revenue not appropriated. Only the Legislature can authorize out of this reserve.

The primary statute allowing the executive to allocate emergency funding has changed little in the past 69 years, despite the changing nature of emergencies and the contemporary structure of state finances. In response to the Covid-19

**AGENCY:** Energy, Minerals, and Natural Resources, Department of Homeland Security and Emergency Management, Department of Finance Administration

**DATE:** August 21<sup>th</sup>, 2024

**PURPOSE OF HEARING:** Wildfire Emergency Funding

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**EXPECTED OUTCOME:** New avenues of wildfire emergency funding

Common Causes of Wildfires:

According to the Western Fire Chiefs Association, roughly 90 percent of all wildfires are caused by human activities, ranging from discarded cigarettes, unattended campfires, equipment malfunction, or sparks from the road. Dry lightning and out of control prescribed burns also contribute.

pandemic, the executive allocated disaster funding in amounts far in excess of the \$750 thousand limitation and began drawing from a source not authorized to provide emergency funds, all without notification to the Legislature or reporting on expenditures. The Legislative Council hired outside counsel to investigate the legality of these actions and requested reports from Legislative Council Service and LFC staff on legal and financial impacts.

The council chose not to pursue legal action against the executive but to encourage the Legislature and executive to work together to develop a new emergency funding system. In advance of the 2021 legislative session, LFC endorsed Senate Bill 295, which would have revised the system for executive allocations of emergency funding from the general fund by clarifying the emergency or disaster situations for which such funding may be allocated, restricting the allowable funding sources and amounts that may be allotted, and establishing requirements for reporting on allocations and expenditures. The bill ultimately did not pass.

Despite the appropriation contingency fund being specified in statute as the source of emergency funding, the executive has drawn from the operating reserve for these purposes since FY19. The operating reserve is the state’s primary reserve fund and is typically used for nonrecurring appropriations. The Legislature allocates funds to the appropriation contingency fund for emergencies, but when this fund is exhausted, the executive has drawn from the larger operating reserve rather than calling a special session to request additional emergency appropriations. Since FY19, \$203.9 million has been drawn from the operating reserve for disaster allotments, and funds continue to be drawn, circumventing the legislative appropriation process.

**Executive Orders.** While nothing in law requires the governor to declare an emergency via executive order, it has been the executive’s longstanding practice to do so. A typical executive order describes the emergent situation, states the situation is beyond local control and requires the resources of the state, declares an emergency to exist, references relevant statutory authority, and identifies the amount of funding to be allocated, the recipient agency, and its allowable uses. When funding is intended to be used by an agency for the benefit of specific local entities, the order will identify those entities, and these entities are considered as the applicants for that funding.

**Executive Orders by Fiscal Year**  
as of July 31, 2024  
(in thousands)

FY	Number of Orders	Number of Funding Orders	Total Funds Allotted
FY15	20	10	\$13,375.00
FY16	30	23	\$18,750.00
FY17	31	17	\$11,975.00
FY18	31	27	\$18,465.00
FY19	48	30	\$34,116.00
FY20	74	34	\$54,470.80
FY21	71	34	\$25,200.00
FY22	139	100	\$72,050.00
FY23	170	138	\$100,300.00
FY24	141	116	\$85,164.60
FY25	15	13	\$9,500.00
<b>Total</b>	<b>770</b>	<b>542</b>	<b>\$443,366.40</b>

Source: Office of the Governor, Secretary of State, New Mexico State Library, SHARE, LFC files

Agencies regularly receiving executive order funding—the Department of Homeland Security and Emergency Management (DHSEM), the Department of Military Affairs (DMA), and the Energy, Minerals and Natural Resources Department (EMNRD)—budget this money within specific funds for this purpose. Executive orders are accounted for by the Department of Finance Authority (DFA) and recipient agencies identical to how DFA monitors special appropriations, and expenditures are booked against specific orders. Executive order funding does not revert with the operating budget, and funding may carry over for many years. After an agency determines an executive order is closed (all expenditures have been completed), remaining balances are reverted to their source at the end of the fiscal year in which they are closed.

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**Energy, Minerals and Natural Resources Department.** EMNRD uses executive order funding for fire suppression efforts. The agency’s Forestry Division responds immediately to in-state wildfires and begins expending funds as needed to address the situation. All expenditures are tracked and tied to specific fires, and the agency uses these expenditures to estimate total costs for fire suppression. Based on these estimates, EMNRD submits a request (or set of requests in increments of \$750 thousand) to the governor for executive order funding. Although these requests cite the specific fire or fires for which they are being requested, the executive orders issued are very broad, allowing the agency to expend executive order funding on fires for which it was not originally requested. Despite language allowing these funds to be expended for “wildland fire disaster relief, post-fire rehabilitation, adequate preparation including pre-positioning to deal with such disasters as a project, or for securing matching funds for emergencies,” EMNRD only uses its executive order funding for fire suppression efforts. Executive orders issued for this purpose cite Sections 12-11-23 through 25 as their statutory authority.

If a fire solely impacted state lands, any executive order funding remaining when a fire is successfully suppressed and all expenditures are completed may be reverted at the end of that fiscal year; however, if the fire involved federal, tribal, or other states’ land, those parties will negotiate cost sharing for fire suppression expenses after the fact. The department reports these negotiations may take two to five years to resolve, and EMNRD may receive reimbursements from the other parties involved or be required to pay additional invoices as a result. In these cases, remaining executive order funding cannot be reverted until cost-sharing negotiations have been resolved and all invoices paid, with potential outstanding claims from other parties a liability to the department. Historically, EMNRD did not track this as a liability, but it began doing so in its FY19 audit.

## Wildfires In New Mexico

The Hermits Peak-Calf Canyon fire, New Mexico’s largest and most damaging in state history, burned roughly 342 thousand acres over a four-month span, destroying 903 structures and causing upwards of 16 thousand people to evacuate. In the same year, the Black fire, burning in southeastern New Mexico from May to July, became the state’s second largest wildfire in its history. Burning over 325 thousand acres, the fire predominantly raged through the Aldo Leopold Wilderness, not attracting the same amount of attention due to its distance from large population centers.

At the close of 2022, according to the National Interagency Fire Center, over 900 thousand acres of New Mexico, an area larger than Rhode Island, had burned due to wildfires <sup>1</sup>. While the many wildfires had a variety of reasons for starting, all were made more dangerous by a reduced snowpack, long periods of high temperatures, depleted precipitation, sustained strong winds, increased aridity and ample levels of underbrush.

Wildfires are highly variable disasters, which can be impacted by dozens of factors. After the 2022 wildfire season, New Mexico had increased levels of precipitation in the monsoons and during the winter, resulting in less ideal

### Recent Legislation regarding Wildfires

In responding to wildfires, a mixture of state and federal dollars have been activated to compensate recovery costs. The Federal Emergency Management Agency (FEMA) has multiple loan programs that individuals and local entities can apply for that can help get funds flowing. In the case of Hermit’s Peak-Calf Canyon, a fire caused by a federal prescribed burn that got out of control, resulted in the government covering the majority of the recovery costs in the form of a roughly \$4 billion dollar relief package. The New Mexico Legislature also helped cover recovery costs, passing legislation to give entities affected by Hermit’s Peak-Calf Canyon access to \$100 million in funds that would be reimbursed by FEMA.

The Legislature took a similar approach in response to Salt and South Fork fire, passing \$70 million in loans for local entities affected, and then appropriated \$10 million to three separate state emergency response agencies to continue work in the affected area.

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<sup>1</sup> National Interagency Fire Center, [2022 Year-To-Date Wildland Fires](#)

conditions for wildfires to grow. Due to these factors, while temperatures during the 2023 wildfire season (May to June) were higher than average, the Western Fire Chiefs Association reported no major fires or prescribed burns spiraled out of control.<sup>2</sup> While May and June have traditionally been New Mexico’s fire season, reports by the Environmental Protection Agency note that the term “fire season” no longer is limited to a few months of the year but is extending, expanding into the monsoon months and starting even earlier in the spring.

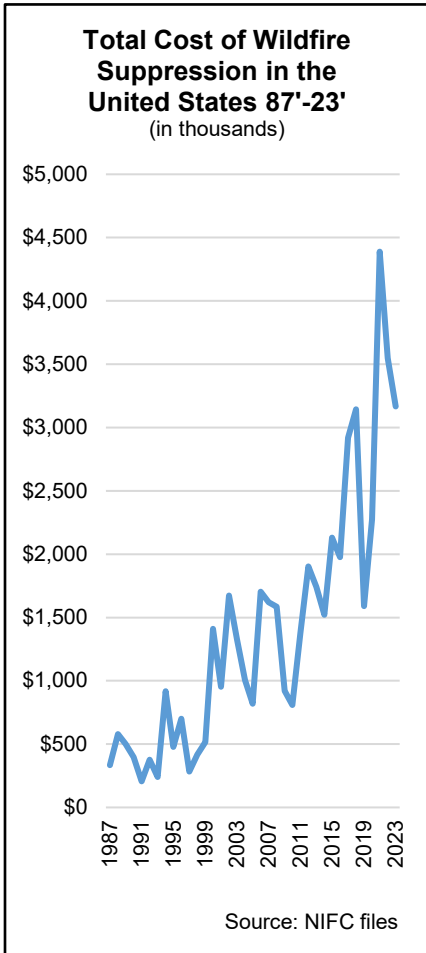
Leading up to the 2024 wildfire season, northern New Mexico had winter precipitation that was average to slightly above average, resulting in a quieter wildfire season in central and northern New Mexico. However, the levels of precipitation and snowpack in southern New Mexico and the Ruidoso area were below average. According to the National Oceanic and Atmospheric Administration the average temperature of fire season months in the Ruidoso area is six degrees hotter and average precipitation levels 66 percent lower than in 1994. This combination of elevated temperatures and low precipitation created the ideal conditions for the Salt and South Fork fires to grow into large and damaging fires. The Salt and South Fork fires burned an estimated 25,508 acres, killed two people, and destroyed hundreds of buildings. There is currently no complete estimate of the cost of damage these fires, and the subsequent floods, caused.

Higher temperatures, reduced precipitation, depleted snowpack, and drought all increase the likelihood and severity of wildfires. Continued, collaborative efforts of local, state, federal, and tribal partners are needed to restore and maintain healthy forests and watersheds. Further, high-risk areas also need to deploy preventive measures to protect homes and towns from wildfires, such as brush thinning, tree removal, and constructing homes with noncombustible materials.

### Costs

Wildfires emergency suppression in New Mexico, according to research done by the Pew Research Institute, costs the state on average between \$20 and \$30 million a year. These are just the costs for emergency suppression, not the costs born from the damage wildfires can do to the land, infrastructure, and people. Due to the variety of damage that a wildfire can do, from burning the soil to the point it cannot hold water, resulting in flash flooding to destroying homes and infrastructure, the costs of wildfires are inherently complex and continue to grow. According to the National Interagency Fire Center, the total federal suppression costs in the United States totaled \$3.1 billion in 2023, an increase of nearly 92 percent in 40 years. This ballooning of wildfire suppression costs began at the turn of the century and show no signs of decreasing.

A presentation by Pew Charitable Trusts to the Legislative Finance Committee in August 2023 noted costs are spread out between three tiers of spending; mitigation, suppression, and recovery. Mitigation is brush thinning, training wildland fire fighters, and auditing and preparing engines. Suppression is the response to wildfires, getting crews in line, coordinating with various other state and federal partners, and then fighting the fire by multiple means (directing the fire when possible, creating barriers, thinning brush to take away fuel for the fire, etc.). And then, the most costly and complicated step is recovery. Recovery is supplying



<sup>2</sup> Western Fire Chiefs Association, New Mexico Fire Season and Risk Factors.

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temporary housing, reimbursing for damages, and aiding in the common economic damages that wildfires can create.

Another component to recovery is determining who is meant to “pay” for the recovery. The Federal Emergency Management Agency (FEMA) has a variety of loan programs available to those affected, but limitations exist. If a resident has private insurance on their homes, they cannot apply that type of FEMA aid. Further, FEMA resources can be for business losses, unemployment assistance, or housing, but none are long-term fixes. Long-term recovery is guided by New Mexico’s Department of Homeland Security and Emergency Management (DHSEM), which collaborates with the various state agencies and local community organizations that help with recovery.

While both the Hermits Peak-Calf Canyon and the Salt and South Fork fires have provided proof that state, local, and federal partners can react quickly to suppress the fires, the costs and complexity of mitigation and recovery remain as areas for growth, collaboration, and ingenuity.

## Recommendations

The current structure of emergency funding in New Mexico should be improved to meet the task of diligently funding the state’s response to disasters. From funding mitigation and suppression within State Forestry, to planning and operations at the Department of Homeland Security and Emergency Management, and to augmenting both of those with dozens of executive orders, the current system creates an emergency funding landscape that lacks proper transparency, tracking, and efficiency.

Following national emergency funding practices, the Legislature should consider the creation of two emergency funds: one for State Forestry and another for the Department of Homeland Security and Emergency Management. These funds would only be accessible and spent during emergencies and would be the only allowable funds eligible for withdrawals. The funds should be used on suppression efforts, the fighting of the fire and floods. Funding for mitigation and recovery currently resides partially within the emergency response agencies recurring budgets and are costs that would not be subsidized by the proposed emergency funds. These funds would improve tracking and transparency of spending while also allowing the responding agencies greater flexibility when funding disaster response efforts.

Further, access to these funds would be predicated on the governor declaring an emergency order. The Legislature could consider allowing use of these funds at a higher threshold than the current \$750 thousand cap. For example, if adjusted for inflation, when the \$750 thousand cap was decided 69 years ago, that cap would now be closer to \$8.6 million.

By creating a framework for emergency funding with more realistic thresholds on executive orders and creating funds that are based on averages costs of disaster response, New Mexico will have the ability to fund and provide the flexibility necessary to respond to emergencies effectively.