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FISCAL IMPACT REPORT

SPONSOR Campos ORIGINAL DATE 02/08/21
 LAST UPDATED 03/01/21 HB _____

SHORT TITLE Disaster Funding Changes SB 295

ANALYST Iglesias/Rabin

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
See fiscal implications		Recurring	General Fund Operating Reserve
See fiscal implications		Recurring	Appropriation Contingency Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMRND	\$0.0	\$6,500.0	\$6,500.0	\$13,000.0	Recurring	Emergency Fire Disaster Fund
EMNRD	\$0.0	\$187.9	\$191.6	\$379.5	Recurring	General Fund (Additional FTE)
DHSEM	\$0.0	\$750.0	\$750.0	\$1,500.0	Recurring	Governor's Disaster Declarations Fund
Total	\$0.0	\$7,437.9	\$7,441.6	\$14,879.5	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB180; Relates to HB112 (GAA), HJR6, HB139, HB159, SB74, and SB176 (GAA)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources (EMNRD)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 295, endorsed by the Legislative Finance Committee, revises 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.¹

The bill repeals Sections 12-11-23 through 25 NMSA 1978, which currently govern emergency funding and rewrites these provisions as new material in Chapter 6, Article 7 NMSA 1978 – the sections of statute that govern public finances. Within these new sections, the bill:

- Establishes a clear definition of disaster to ensure this funding is only used for truly emergent situations for which no alternate funding mechanisms are available,
- Enables the governor to issue an executive order or orders allocating up to \$5 million each to address the disaster (currently allocations must be in increments of \$750 thousand per executive order),
- Requires the governor to notify the legislature within five days of the allocation of these funds and provide quarterly reports on the status of those funds, and
- Requires any unspent funds to revert at the close of the fiscal year following the year in which they were allocated.

The bill also specifies the appropriation contingency fund (ACF) as the primary source of funding for disasters, and if the balance of the ACF is insufficient, the governor may access up to a total of \$20 million from the general fund operating reserve with approval from the Board of Finance. If federal or other nonstate funds are received to remediate the same disaster, the bill requires the ACF or operating reserve be reimbursed by a corresponding amount of allotted funds.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

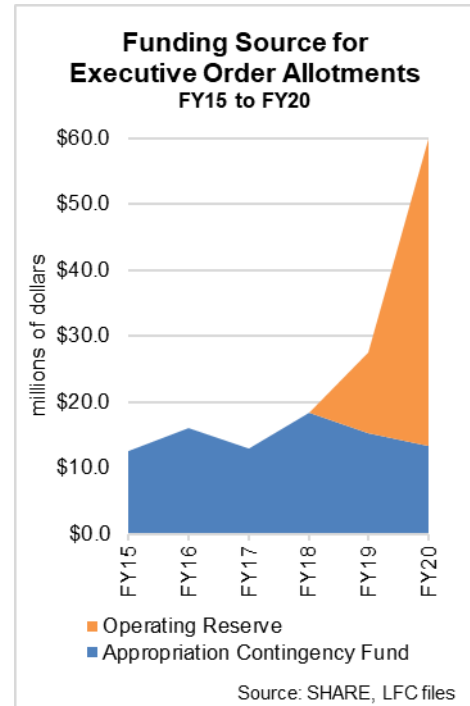
This bill addresses three primary issues regarding executive order funding of disasters: (1) clarification of funding sources, (2) the size of disaster allocations, and (3) reporting requirements of executive order funding to the Legislature.

¹ For purposes of this analysis, “allocation” signifies the governor’s direction (generally made through an executive order) that certain funds be made available for a disaster, while “allotment” signifies the actual transfer of funds to the recipient. Historically, funds have sometimes been allotted months or even years after they were initially allocated. Attachment 1 provides an overview of when funds were allocated versus allotted from FY15 to FY20.

Funding Sources. Currently, there are no limits on the amount of disaster funding that may be allocated in total, and the Legislature and executive have differing interpretations of where these funds may be drawn from and how much can be allocated per executive order.

While executive order allotments in FY19 were some of the highest recorded (at \$27.5 million), the Covid-19 pandemic resulted in FY20 allotments far outstripping those of any previous year, at \$59.9 million, including \$35.5 million for Covid-19 response.

The current system of emergency funding did not anticipate allotments of the scale seen in the past two years, and there is no mechanism in place to provide emergency funds in the event the appropriation contingency fund is depleted. As a result, when ACF balances were insufficient to cover disaster allotments in FY19 and FY20, the executive used general fund operating reserves to cover the allotments. However, there are disagreements on whether the executive had sufficient statutory authority to use the operating reserve funds.



To address this issue, this bill codifies the appropriation contingency fund as the primary source of disaster funding as defined by this bill and creates a mechanism by which a limited amount of disaster funding may be allotted from the general fund operating reserve (no more than \$20 million, with Board of Finance approval) in the event there are insufficient funds in the ACF to cover an emergency declaration. Attachment 2 provides a flowchart for disaster funding as proposed by this bill, and Attachment 3 provides a history of total disaster allotments by fiscal year.

Disaster Allocation Amounts. Current statute limits emergency allocations to \$750 thousand per entity per emergency, but for years that limit has fallen short of the needs for fire suppression and matching requirements for federal emergency funds. The executive has routinely bypassed this limit by issuing a series of identical orders for \$750 thousand on the same day, effectively allocating millions to address a single disaster. The emergency costs related to the Covid-19 pandemic exceeded this limit at an even greater scale, and the governor issued several orders that outright exceeded the limit, including orders allocating \$10 million and \$20 million to the Department of Health.

Recognizing the \$750 thousand limitation – which was established as a \$500 thousand limit in the 1950s, when the law was originally written, and then increased to the current level in 1989 – may be insufficient to cover the costs of addressing disasters, this bill increases the limit to \$5 million per executive order. Additionally, the bill requires that funding to revert if it not expended by the end of the fiscal year following the year it was allotted. This ensures emergency funding is available until the Legislature has the opportunity to meet and appropriate funding for longer-term disaster mitigation, if necessary.

Reporting Requirements. Currently, there is no formal system in place by which the Legislature is notified of the allotment of these funds, the source or sources from which they are being drawn, or the balance of the relevant funding source(s). Within five days of issuing an executive order to allocate funds, this bill requires the governor to notify LFC and the Legislative Council Service of the disaster, amount allotted, intended recipients of the funds, funding sources, projected uses of the funds, and any potential reimbursements or federal matching funds that could be leveraged through those dollars. The bill also requires quarterly reporting of the expenses made against the allotments and any balances remaining.

SIGNIFICANT ISSUES

The primary statute allowing the executive to allocate emergency funding has changed little since originally established in 1955, despite the changing nature of emergencies and the contemporary structure of state finances. The Covid-19 pandemic has exposed a system poorly equipped to handle emergencies of this scale, established by statutes with unclear language open to different interpretations, and lacking sufficient accountability and transparency. The pandemic experience illuminates the need for a new emergency funding system that is flexible, clear, and accountable.

Two agencies currently supplement their annual operating budgets with executive order funding that may not fall under the revised definition proposed by this bill. The Energy, Minerals and Natural Resources Department's (EMNRD) fire suppression expenditures have been funded by executive orders for many years, and funding for these activities is therefore not included in the agency's operating budget. However, these emergency funds are not only used to manage current fires but also to pay costs related to past fires and support repositioning and readiness in areas with high fire danger. On average, EMNRD expends \$6.5 million per year in executive order funding. Additionally, since FY17, the Department of Homeland Security and Emergency Management (DHSEM) has received \$750 thousand each year to address future emergencies and disasters that may require immediate support to assure rapid response and unhindered deployment of necessary assets. The additional restrictions in the definition of emergency established by this bill may restrict the availability of executive order funding for this purpose and impact those agencies' operating budgets. While unforeseen expenditures, such as an unexpectedly large fire season, could still qualify as an emergency and would still receive funding under this bill, the Legislature may need to provide additional funding in the agencies' budgets to ameliorate the bill's impact to their operating budgets.

PERFORMANCE IMPLICATIONS

ENMRD states the bill could be beneficial to EMNRD's ability to request executive orders to respond to wildland fire activity throughout the state if the disasters in the bill are defined as cumulative (e.g. includes the state's fire season as a cumulative event rather than by individual wildland fire events). Under this bill, the State Forestry Division can request executive orders up to \$5 million per request. From FY06 to FY20, EMNRD states the division has averaged 14 executive orders per year, totaling \$10.5 million per year, to pay for fire suppression activities. By contrast, in drought years (2006 and 2018) effective fire suppression required 21 executive orders, and 2011 required 30 executive orders totaling \$22.5 million. Currently, in FY21, which included a weak monsoon and a dry fall with heavy fire activity, the division has received \$5.3 million through seven executive orders for wildland fire suppression efforts from July to September 2020.

EMNRD states that by appropriations allowed for each disaster-related executive order would mean the division may no longer need to submit multiple executive orders, sometimes only days apart, for emergency funds required to pay for the cost of fighting wildland fires.

ADMINISTRATIVE IMPLICATIONS

DOH states the bill's five-day timeline for the governor to report to LFC and the Legislative Council Service on the emergency funding may be too short to fully account for all expenses related to the disaster. However, LFC staff note the initial report to the Legislature within five days of issuing the executive order to allot funds covers the *expectations* for those funds, and should therefore include information available to the governor at the time of issuing the order – including a description of the disaster, the amount of funding allocated and the *expected* expenditure of those funds, the funding source, a list of recipients and *projected* uses of the funds, a copy of the agency's request for assistance, and any reimbursements or federal matching funds *expected* to be received. An actual accounting of expenditures from the allotted funds is required in subsequent quarterly reports.

EMNRD also states that, currently, the division's procurement process is decentralized between eight field offices that dispatch, order, procure, and process payments for wildland firefighting. The department believes the passage of this bill would require the division to centralize and add staff capacity for procurement and tracking to meet the two-year requirement to expend or encumber executive orders. The department believes this would require the addition of three FTE.

CONFLICT, RELATIONSHIP

The LFC recommendation for the General Appropriation Act of 2021 (House Bill 112 or Senate Bill 176) contains a \$50 million transfer from the operating reserve to replenish the balance of the appropriation contingency fund.

Should this bill pass, the Legislature may need to provide additional funding to the operating budgets for EMNRD and DHSEM in the General Appropriation Act of 2021 (House Bill 2) to cover regular fire suppression and rapid response needs typically covered by routine annual executive orders (see discussion in Significant Issues section of this FIR).

This bill conflicts with House Bill 180, which limits the funding available for emergency orders pursuant to Section 12-11-23 through 12-11-25 NMSA 1978 to no more than \$750 thousand per quarter of a fiscal year to address emergencies declared in that quarter and designates the appropriation contingency fund as the source of this funding.

This bill relates to House Bill 139 and House Joint Resolution 6, which provide that a declaration of a state of emergency terminates after 90 days unless the governor calls the Legislature into special session to address the circumstances of the emergency.

This bill relates to House Bill 159 amends provisions governing rulemaking under the Public Health Emergency Response Act (PHERA) to prohibit agencies from promulgating rules that add to or alter the New Mexico Administrative Code when a public health order is in effect, unless the proposed rule changes are authorized by the governor.

This bill also relates to Senate Bill 74, which amends and enacts statutory sections within the Emergency Powers Code, the PHERA, and the Public Health Act.

OTHER SUBSTANTIVE ISSUES

Section 20-1-6 NMSA 1978 provides up to \$1 million annually from “any money available in the state treasury not otherwise appropriated” for the New Mexico National Guard to conduct state active duty assignments. For the past several years, the governor has issued executive orders each fiscal year allocating \$750 thousand of these funds for expenditures in that year and ordering the national guard into state active duty to respond to any in-state civil emergencies, disasters, or search and rescue missions that might require the guard’s assistance. While the governor generally allocates this funding via executive order, this bill does not impact that section of law and would not affect the executive’s ability to allocate these funds.

ATTACHMENTS

1. History of Executive Order Allocations and Allotments
2. EO Funding Flowchart (As Proposed In The Bill)
3. Disaster Allotments And Select Reserve Fund Ending Balances By Fiscal Year

DI/ER/rl/al

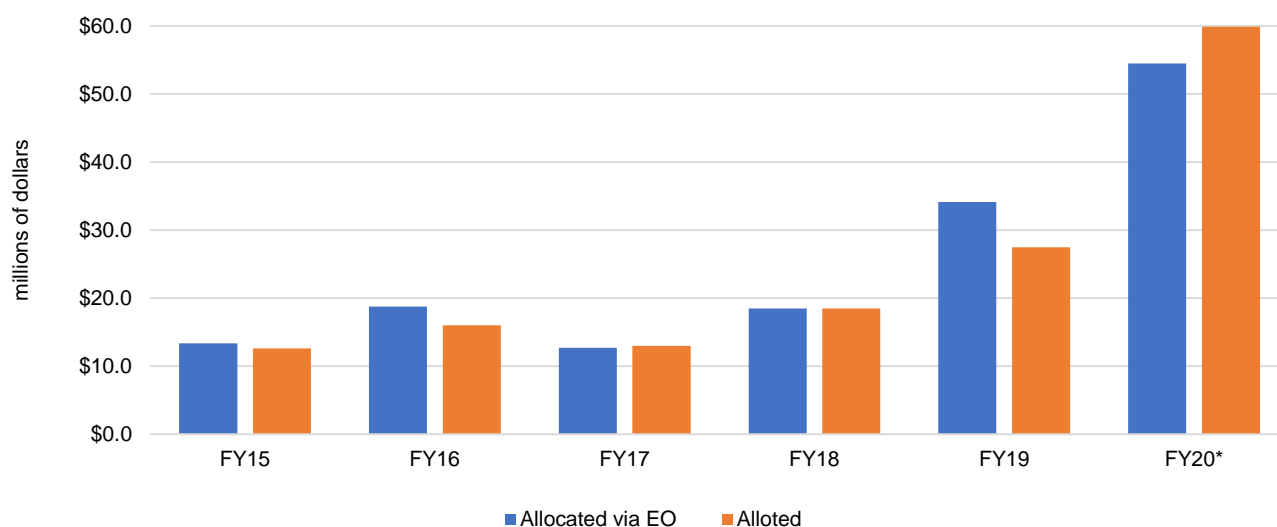
Executive Order (EO) Allocations vs. Allotments¹

(in millions)

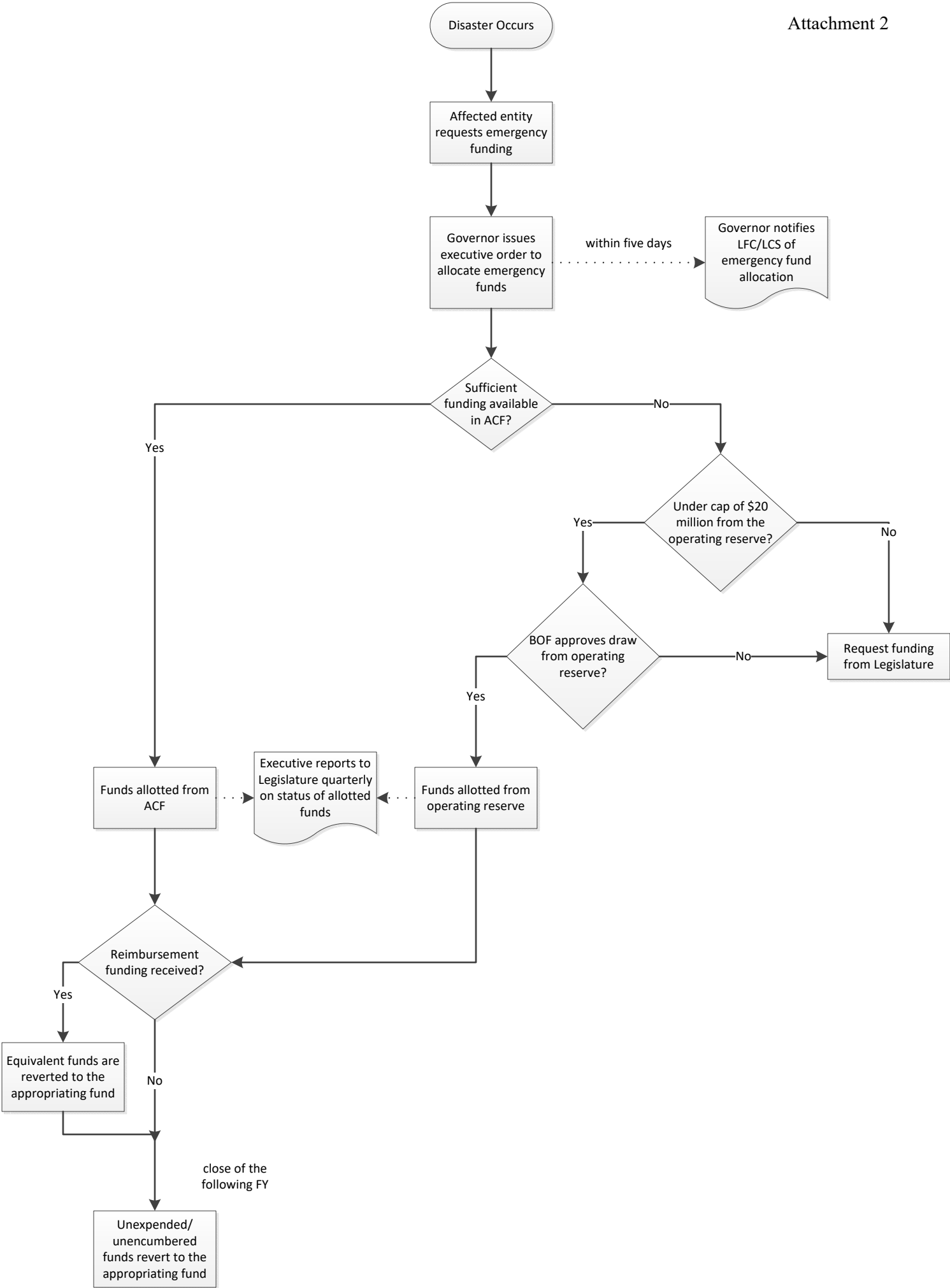
	FY15	FY16	FY17	FY18	FY19	FY20	Outstanding	Total
Allocated via EO	\$ 13.4	\$ 18.8	\$ 12.7	\$ 18.5	\$ 34.1	\$ 54.5	N/A	\$ 151.9
Alloted	\$ 12.6	\$ 16.0	\$ 13.0	\$ 18.5	\$ 27.5	\$ 59.9	\$ 2.3	\$ 153.1
<i>FY15</i>	\$ 12.6	\$ 0.8	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13.4
<i>FY16</i>	\$ -	\$ 15.3	\$ 1.8	\$ -	\$ 1.8	\$ -	\$ -	\$ 18.8
<i>FY17</i>	\$ -	\$ -	\$ 11.2	\$ 0.8	\$ -	\$ -	\$ 0.8	\$ 12.0
<i>FY18</i>	\$ -	\$ -	\$ -	\$ 17.7	\$ 0.8	\$ -	\$ -	\$ 18.5
<i>FY19</i>	\$ -	\$ -	\$ -	\$ -	\$ 25.0	\$ 9.2	\$ -	\$ 34.1
<i>FY20</i>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3.5
Alloted by Fund	\$ 12.6	\$ 16.0	\$ 13.0	\$ 18.5	\$ 27.5	\$ 59.9	N/A	\$ 147.4
<i>85200 (Operating Reserve)</i>	\$ -	\$ -	\$ -	\$ -	\$ 12.1	\$ 46.6	N/A	\$ 58.7
<i>85400 (ACF)²</i>	\$ 12.6	\$ 16.0	\$ 13.0	\$ 18.5	\$ 15.3	\$ 13.3	N/A	\$ 88.7
Difference (Allocated - Alloted)	\$ 0.8	\$ 2.8	\$ (0.3)	\$ -	\$ 6.7	\$ (5.4)	N/A	\$ (1.2)

Source: SHARE, LFC files

1. Allocations are amounts specified in issued executive order. Allotments are made from the general fund (the appropriation contingency fund or the operating reserve) to agencies.
2. Appropriation contingency fund.

History of Executive Order Allocations and Allotments
FY15 to FY20

Source: SHARE, LFC files



General Fund Select Reserve FY Ending Balances				ACF Spending	
Fiscal year	Operating Reserve	Appropriation Contingency Fund		Disaster Allotment Expenditures	Other*
		ACF	ACF Education Lock Box		
FY89	\$ 112.8	\$ 28.4			
FY90	\$ 108.0	\$ 17.4			
FY91	\$ 62.5	\$ 14.4			
FY92	\$ 101.5	\$ 12.4			
FY93	\$ 206.3	\$ 8.9			
FY94	\$ 147.9	\$ 7.8		\$ 2.0	
FY95	\$ 117.1	\$ 5.4		\$ 3.8	
FY96	\$ 21.6	\$ 0.5		\$ 5.4	
FY97	\$ 80.8	\$ 9.4		**	
FY98	\$ 225.3	\$ 6.9		\$ 3.0	
FY99	\$ 185.4	\$ 3.6		\$ 3.3	
FY00	\$ 191.6	\$ 1.0		\$ 16.7	
FY01	\$ 267.2	\$ 94.0		\$ 6.2	\$ 68.0
FY02	\$ 146.5	\$ 77.9		\$ 25.4	
FY03	\$ 46.9	\$ 58.5		\$ 8.1	\$ 19.5
FY04	\$ 128.8	\$ 49.9	\$ 120.0	\$ 10.0	
FY05	\$ 330.1	\$ 42.4	\$ 105.3	\$ 8.1	\$ 6.2
FY06	\$ 359.6	\$ 19.9	\$ 79.8	\$ 13.3	\$ 9.5
FY07	\$ 156.1	\$ 38.7	\$ 74.9	\$ 18.2	\$ 4.7
FY08	\$ 247.2	\$ 27.5	\$ 69.1	\$ 17.9	
FY09	\$ 37.5	\$ 7.6	\$ 23.0	\$ 11.2	\$ 13.1
FY10	\$ 36.2	\$ 29.6	\$ 53.1	\$ 9.9	
FY11	\$ 275.9	\$ 5.2	\$ 47.1	\$ 28.8	
FY12	\$ 346.8	\$ 29.5	\$ 39.1	\$ 17.2	
FY13	\$ 327.1	\$ 16.4	\$ 9.1	\$ 28.4	
FY14	\$ 274.4	\$ 18.4	\$ 3.1	\$ 19.2	
FY15	\$ 319.8	\$ 28.4	\$ -	\$ 12.6	
FY16	\$ 0.5	\$ 34.3		\$ 16.0	
FY17	\$ 322.5	\$ 26.0		\$ 13.0	
FY18	\$ 485.9	\$ 12.3		\$ 18.5	
FY19	\$ 486.3	\$ 11.7		\$ 27.5	
FY20	\$ 507.2	\$ 8.7		\$ 59.9	

Source: LFC post-session reports, general fund financial summaries (GFFS), and DFA audits

*where indicated on the GFFS

**data unavailable

Note: FY19 & FY20 disaster expenditures pulled from ACF and Operating Reserve