

**New Mexico’s system for allocating emergency funding has not been updated in decades and is insufficient to handle the unprecedented emergency situations the state has faced in the past several years.**

Multiple disasters from the COVID-19 pandemic to wildfires and flooding have exposed a system with unclear language open to different interpretations and lacking sufficient accountability and transparency.

Since 2020, the governor has issued hundreds of executive orders allocating hundreds of millions of dollars outside of the regular appropriations process to handle emergencies. Efforts to resolve these issues through legislation, appropriations, and cooperation with the executive have been largely unsuccessful.

The issue has become particularly acute over the past fifteen months. The governor has issued over 463 executive orders (EOs) between FY25 and FY26 and roughly \$340 million has been authorized in emergency spending. Of the \$340 million in disaster funding authorized there is a gap of \$67.8 or roughly 90 EOs, which do not currently have a specific source that can be found in SHARE.

In FY25, the total amount of funding the governor used for executive orders was \$260.1 million. Of this amount, \$194.4 million has come from the operating reserve and \$65.7 million has come from the appropriation contingency fund (ACF). So far in FY26, \$15.5 million in executive orders have been given a specific source, the ACF, in the state’s accounting system, SHARE.

The current emergency funding system impedes the state’s financial stability and disrupts the legislative branch’s appropriative authority by spending into general fund accounts without explicit authorization. Changes to how executive orders are funded, their frequency, and their reporting would modernize the state’s ability to respond to disasters through a more prudent and transparent process.

## Current Disasters and High-Level Totals

From FY25 to FY26, the governor issued a total of 463 executive orders (347 in FY25 and 116 in FY26). The vast majority of these orders authorize the maximum allowable expenditure of \$750 thousand, with only one order in FY26 and 20 orders in FY25 not authorizing the full amount. The Department of Homeland Security and Emergency Management (DHSEM) was authorized \$205 million of the \$260.1 million.

With already 116 executive orders issued in FY26, and accounting for the current funding trends for previous executive orders, there is the potential for an additional \$200 million drawn for emergency orders in FY26 from the operating reserve.

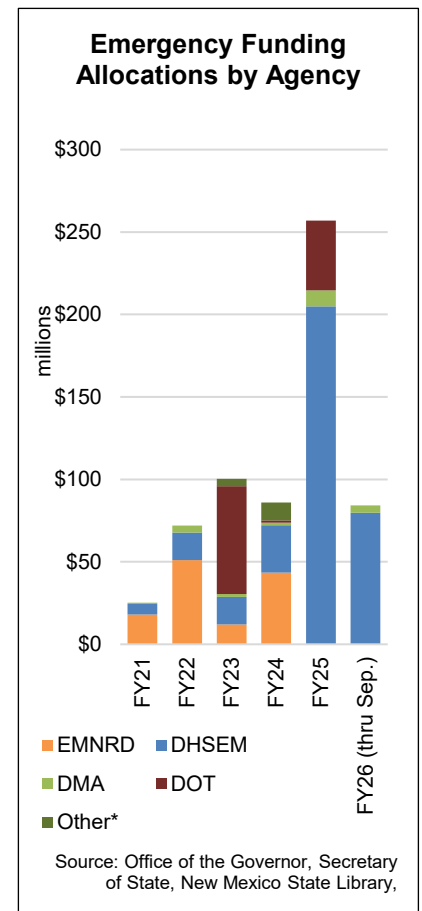
**AGENCY:** Department of Homeland Security and Emergency Management & Energy, Minerals, and Natural Resources Department

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## Issues with the Emergency Funding System

The primary statute allowing the executive to allocate emergency funding has changed little in the past 70 years, despite the changing nature of emergencies and the contemporary structure of state finances. In response to the Covid-19 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. In 2021, 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.

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.

### Funding Sources

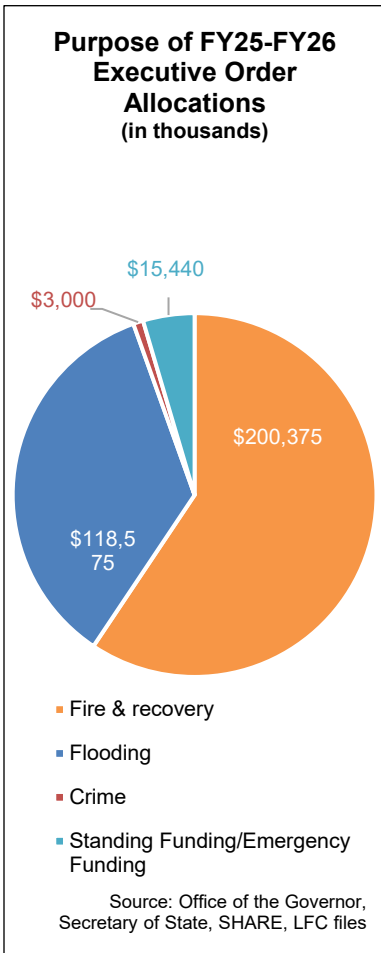
The current system of emergency funding did not anticipate allotments on the scale seen over the past several years, and no mechanism is in place to provide emergency funds in the event the appropriation contingency fund (ACF) is depleted. As a result, when ACF balances were exhausted from disaster allotments in FY19 through FY25, the executive began drawing on the general fund operating reserves to continue allotments, with the statutory authority to do so in question. Moneys are designated in the operating reserve and are therefore not “unappropriated”. Unlike with the ACF, the statute does not provide for the executive to draw from the operating reserve.

To address this issue, SB295 (2021 Regular Session) proposed to codify the ACF as the primary source of funding for disasters, and if the balance of the ACF were insufficient, the governor could access up to a total of \$20 million from the general fund operating reserve with approval from the Board of Finance.

Although SB295 was unsuccessful, during the 2021 legislative session, the Legislature appropriated an additional \$50 million to the ACF to provide what it believed to be sufficient funding to preclude use of the operating reserve. However, while these funds were sufficient to cover emergency needs in the second half of FY21 and most of FY22, ACF general fund balances were depleted by June 2022, and the executive again began allotting funds from the operating reserve. The legislature appropriated \$50 million for disasters to the ACF in FY24 plus \$150 million in FY26. The practice of drawing from the operating reserve by the executive resumed regardless of the funding within the ACF.

### Emergency Funding Uses

The term “disaster” is defined three times in the Disaster Acts, but none of these definitions explicitly apply to Sections 12-11-23 through 25 NMSA 1978, the statute which codifies the governor’s ability to issue executive orders for emergencies. All three definitions require an enemy attack and a state of martial law. The emergency funding statutes state an intention of establishing a source of emergency funding for natural disasters, but the closest definition to be found in these sections is the requirement the money “shall be expended for disaster relief



for any disaster declared by the governor to be of such magnitude as to be beyond local control and requiring the resources of the state.” The 2006 LFC program evaluation of the Department of Public Safety’s Office of Emergency Management recommended the Legislature amend the statutes to clarify their intent and align the definitions of disaster and emergency to federal definitions.

Without a clear definition of disaster or emergency, executive orders have interpreted authority very broadly, including orders only mentioning the potential for an emergency disaster as a rationale for declaring an emergency and allocating funding. In this way, the orders have used to provide future funding (this is sometimes referred to as “standing” funding). The 2006 evaluation recommended such funding be included in the normal budget process,” but such a requirement has never been enacted.

Between FY17 and FY21, the governor issued an executive order every year providing \$750 thousand to DHSEM for general emergency purposes. If such funding is needed, it should be added to DHSEM’s operating budget. Similarly, while the scope of New Mexico’s fire season may vary from year to year, the occurrence of fires is virtually guaranteed, and budgeting recurring funds to cover these costs (which could be supplemented by emergency funding during a particularly bad fire season) would seem reasonable; however, EMNRD’s fire-suppression expenditures are primarily funded via executive order. Additionally, EMNRD’s 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.

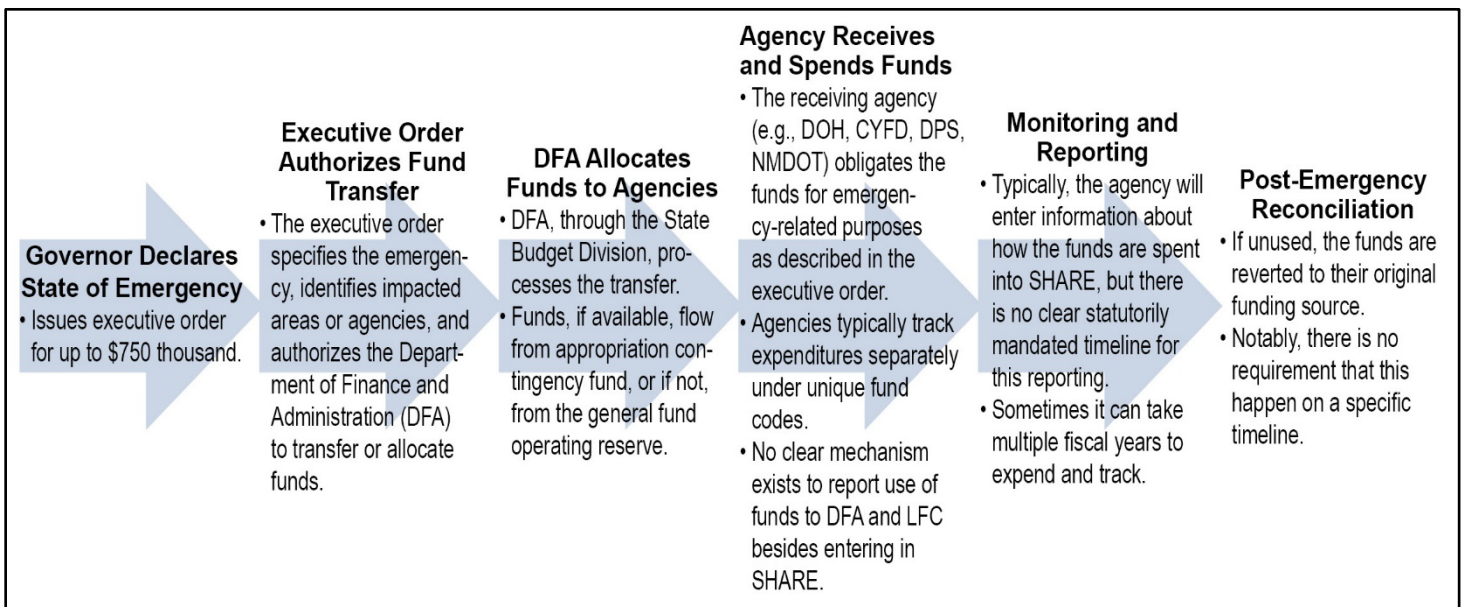
SB295 would have established a clear definition of disaster to ensure this funding is only used for truly emergent situations for which no alternate funding mechanisms are available. It is possible EMNRD and DHSEM would not have been able to supplement their annual operating budgets with executive order funding under the revised definition proposed by this bill, which could impact those agencies’ operating budgets. While unforeseen expenditures, such as an unexpectedly large fire season, could still have qualified as an emergency and would still have received funding under the bill, the Legislature may have needed to provide additional funding in the agencies’ budgets to ameliorate the bill’s impact to their operating budgets.

**Executive Order 2025-193**

Executive order 2025-193 is an example of the current issues hindering the state’s disaster funding system.

Administered this past May, the order rescinded specifically 29 separate executive orders and also rescinded, “any Executive orders necessitated by the COVID-19 pandemic that were not by operation of Executive Order 2023-036.” The order then goes on to also state that “I further ORDER that all orders declaring a state of emergency and releasing emergency funds, including those issued by previous Governors, shall be deemed to expire once their authorized funds are expended or no longer necessary to provide emergency assistance.”

The order highlights the lack of statutory evidence for when executive orders or executive order funding revert or expire, nor is their statute which specifies if the funding stays with the agencies or is placed back in the original funding source.



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## Wildfire Legislation

During the 2025 Legislative Session, the legislature passed multiple wildfire and disaster related bills which added additional funding avenues for recovering communities and further bolstered State Forestry to respond and prepare the state's forests:

-Senate Bill 31-Zero Interest Natural Disaster Loans- The bill establishes the natural disaster revolving fund to provide zero-interest loans to political subdivisions of the state and electric cooperatives that have been approved for Federal Emergency Management Agency (FEMA) public assistance funding following a federally declared natural disaster.

-Senate Bill 33-the Wildfire Prepared Act- The bill amends sections of the Forest Conservation Act, creates a section called the Wildfire Prepared Act, adds to and defines members of the Fire Planning Task Force, updates the duties of the Fire Planning Task Force, creates the wildfire prepared fund (WPF), and creates the Wildfire Prepared Program within the Energy, Minerals and Natural Resources Department (EMNRD).

-House Bill 175, which adds and amends language within the Forest and Watershed Restoration Act, proposes to add projects that create or maintain buffers zones in and around wildland and urban areas to the list of eligible projects for funding from the forest land protection revolving fund.

## Structure of Existing Emergency Funding System

**General Emergency Funding System.** Sections 12-11-23 through 25 NMSA 1978 provides a mechanism for 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,” although such money generally does not exist. Section 6-4-2.3 NMSA 1978 allows for the use of the appropriation contingency fund (ACF) “in the event there is no surplus of unappropriated money in the general fund and in the amount authorized by the legislature.”

Since FY19, executive order allotments exceeded the funds available in the ACF, and the Department of Finance and Administration (DFA) allotted funding to agencies from the general fund operating reserve. Concerns regarding this practice are outlined in further detail later in this document.

**Emergency Funding for the National Guard.** Section 20-1-6 NMSA 1978 requires the state to pay for all expenditures necessary for the governor to call the New Mexico National Guard into service (often referred to as “state active duty”). These expenses will be paid by the state treasurer using “any money available in the state treasury not otherwise appropriated.” If the expenditures approach \$1 million, the governor must review anticipated expenses and, if it is “necessary and prudent in order to provide for the public defense,” may approve additional expenditures from the general fund. If sufficient funds are not available and it is necessary to suppress insurrection or to provide for the public defense, the governor may create an indebtedness under Article 9, Section 7, of the New Mexico Constitution.

**Executive Orders.** While nothing in these statutes 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 that 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 the allowable uses of the funding. When funding is intended to be used by an agency for the benefit of specific local entities, the order will identify those entities, and it appears these are considered as the applicants for that funding. Executive orders allocating funding to the national guard under Section 20-1-6 NMSA 1978 sometimes do not declare an emergency, as it is not required by that statute.

**Funding Recipients.** Traditionally, executive order funding has been directed to the Department of Homeland Security and Emergency Management (DHSEM), the Department of Military Affairs (DMA), and the Energy, Minerals and Natural Resources Department (EMNRD), although several additional agencies received funding during the Covid-19 pandemic and since. In addition to funding for specific emergencies, DMA and DHSEM both receive \$750 thousand in executive order funding near the beginning of each fiscal year for nonspecific, potential emergency purposes. A 2006 LFC program evaluation finding that “some executive orders are being used as a vehicle to fund non-disaster, non-emergency activities that should be planned and included in the base budget” remains true in 2025.

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Executive order funding does not revert at the end of the fiscal year and may carry over for many years. After an agency determines all relevant expenditures have been completed, remaining executive order balances are typically reverted to their source fund at the end of the fiscal year in which they are closed.

## Next Steps and Previous Legislation

Allowing for use of the operating reserve for executive orders damages the state's financial stability and impedes on the Legislatures appropriative powers. Designating a fund for executive order spending and eliminating vague language could resolve this issue. Creating a cap on the number of executive orders is necessary to determine how much funding the legislature intends to provide for emergencies. Additional solutions include replacing the appropriation contingency fund with a disaster fund, a fund with similar flexibility as the ACF but which is not included in reserves. In addition to this new fund, the legislature could consider removing the \$750 thousand cap on each executive order and increasing it be commensurate with inflation to approximately \$4 million. Additional reporting could also be tied to this new disaster fund, allowing the legislature and stakeholders to understand how disaster funding is spent.

### House Bill 191

While passed out of both chambers unanimously but ultimately pocket vetoed, House Bill 191 (HB191) would have created two wildfire-related permanent funds administered by the Energy, Minerals and Natural Resources Department (EMNRD): the post wildfire fund and the wildfire suppression fund.

The wildfire suppression fund would have provided support for costs associated with actively fighting wildfires, including firefighting tools, equipment and training and paying emergency hired wildland fire fighters. The post-wildfire fund would have acted as additional support for State Forestry post wildfire actions, such as slope stabilization, erosion control, seeding, and reforestation. An appropriation of \$12 million into the post-wildfire fund was included in the LFC GAA.

Both the wildfire suppression and post-wildfire funds would have acted as repositories for reimbursements, appropriations, gifts, and revenue for preparedness and suppression work. HB191 also required EMNRD to report to the Legislature annually on August 15 on the balances, reimbursements, prior-year annual expenditures, and recommended appropriations for both funds, in addition to the anticipated wildfire conditions for the next year.

### Senate Bill 295

Proposed during the 2021 legislative session, Senate Bill 295 (SB295) proposed to codify the ACF as the primary source of funding for disasters, and if the balance of the ACF were insufficient, the governor could access up to a total of \$20 million from the general fund operating reserve with approval from the Board of Finance.

SB295 did not pass out of the legislature. The ACF was depleted by the end of FY22 and the executive continued its practice of using the general fund operating reserve to fund executive orders.

## Pew Disaster Report

Analysis from Pew Charitable Trust on state response to wildfires broke down wildfire expenditures into three categories: Mitigation, Suppression, and Post-Wildfire. HB 191's primary focus is on Suppression and Post wildfire operations.

A recent brief by the Pew Charitable Trust analyzed how different states are responding, recovering, and preparing for natural disasters. They also created a rubric to which states can compare and plan their natural disaster budgeting, focusing on how state's measure, manage, and mitigate.

The Legislature and the state's various natural resource and disaster response agencies have implemented some of these practices, though there are areas the state could consider expanding or reorienting its current operations. Below are areas where the state has already begun utilizing best practices and where those practices could be enhanced:

- Collecting comprehensive data:
- Budgeting proactively:
- Investing in mitigation and resilience: