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FISCAL IMPACT REPORT

SPONSOR Cook/Montoya, RD/Dow/ Pettigrew ORIGINAL DATE 02/01/21 LAST UPDATED 02/12/21 HB 180

SHORT TITLE Limit Contingency Appropriations SB _____

ANALYST Iglesias/Rabin

APPROPRIATIONS (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
(Up to \$13 million per year on average, see fiscal implications)					Recurring	Appropriation Contingency Fund
See fiscal implications					Recurring	Operating Reserve

Parenthesis () indicate appropriation decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
\$0.0	Up to \$6,500.0	Up to \$6,500.0	Up to \$13,000.0	Recurring	ENMRD – Emergency Fire Disaster Fund
\$0.0	Up to \$750.0	Up to \$750.0	Up to \$1,500.0	Recurring	DHSEM - Governor’s Disaster Declarations Fund

Parenthesis () indicate expenditure decreases

Relates to House Bill 139, House Joint Resolution 6; Conflicts with Senate Bill 295

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Department of Homeland Security and Emergency Management (DHSEM)

SUMMARY

Synopsis of Bill

House Bill 180 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.

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

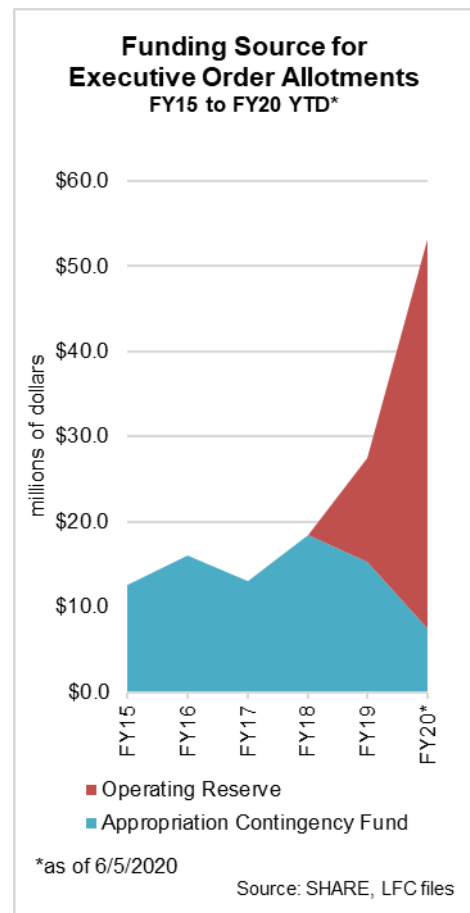
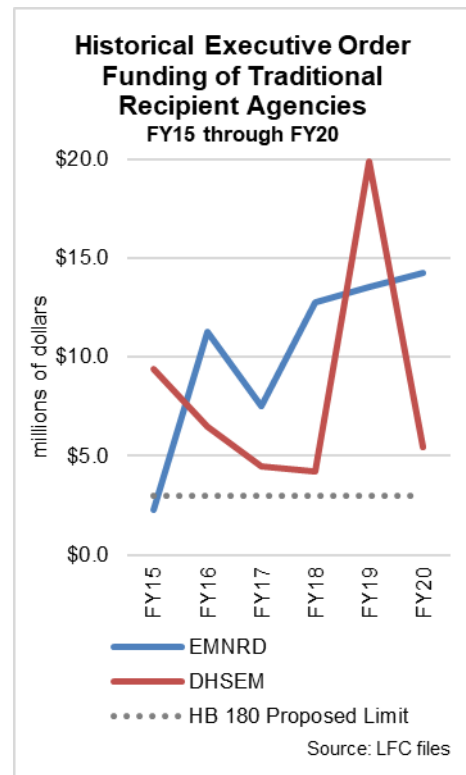
FISCAL IMPLICATIONS

This bill limits emergency order funding to \$750 thousand per quarter, a total of \$3 million per fiscal year. From FY89-FY18, total emergency spending in a fiscal year ranged from \$2 million to \$28.8 million, with an average of \$13 million. Note, this is total disaster spending, not spending per specific disaster in those fiscal years (see Attachment 1). Funds are commonly expended for fire suppression efforts and to provide state matching funds to leverage Federal Emergency Management Agency (FEMA) disaster funds. Executive order allotments in FY19 were some of the highest recorded (at \$27.5 million), but 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.

Generally, emergency order funding is allotted from the appropriation contingency fund (ACF). However, when ACF balances were insufficient to cover disaster allotments in FY19 and FY20, the executive used general fund operating reserves to cover the allotments.¹

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 (DOH).

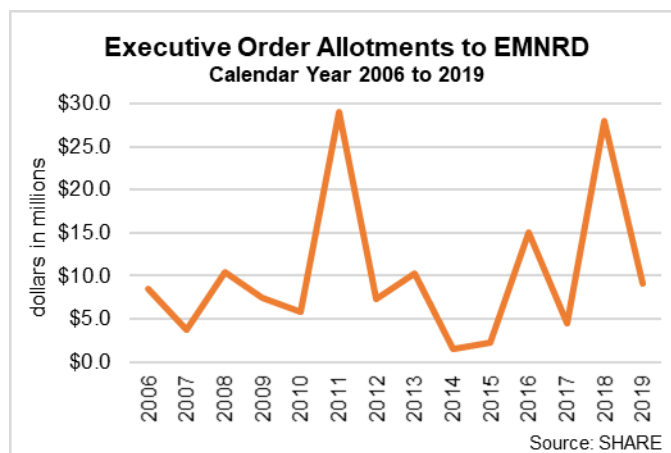
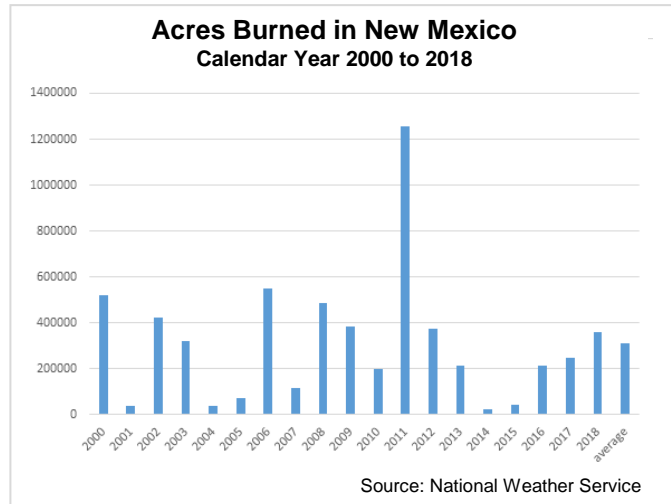
The \$750 thousand limitation – which was established as a \$500 thousand limit in the 1950s, when the law was originally written, and then increased to the current level in 1989 – may be insufficient to cover the costs of addressing emergencies. However, the limitations of emergency



¹ Notably, there are disagreements on whether the executive had sufficient statutory authority to use the operating reserve funds for emergency order funding.

funding set in this bill could exacerbate the issue of sufficient emergency funding. If sufficient funding to address emergencies is not available, it would require a special session of the Legislature to address the funding shortfall. Given the scale of the disparity between the limitations imposed by this bill and the historical need for emergency funds, it is likely that, under this bill, the Legislature would routinely be called into special session to address emergency funding for fire suppression and matching requirements for federal emergency funds.

Energy, Minerals and Natural Resources Department. During FY20, the State Forestry Division (SFD) of the Energy, Minerals and Natural Resources Department (EMNRD) recorded 746 fires, 401 more than the previous year, that burned over 113.4 thousand acres and cost over \$8.7 million. The division reports the increased fire activity was attributable to a dry winter and spring. Fire suppression expenditures are funded by executive orders and, therefore, are not included in EMNRD's operating budget. The agency requests executive orders to manage current fires, pay invoices related to past fires (including invoices received from partner agencies after cost-sharing negotiations), and support repositioning and readiness in areas with high fire danger. In total, SFD received \$14.3 million in executive order funding in FY20.



On average, SFD expends \$6.5 million per year in executive order funding. Because fire suppression is a key function of the program and requires funding every year, the Legislature may wish to consider including funds for this purpose in the agency's operating budget. This would allow for better oversight of these expenditures and would ensure the agency's budget accurately reflects the actual expenditures of a core program. The Legislature could appropriate funds in the operating budget sufficient to cover the expected minimum expenditures related to fire suppression, based on average annual costs. Any costs in excess of the available operating funds could be requested as executive orders.

However, under this bill, any additional funding to EMNRD for fire suppression (and all other emergency funding needs) would be limited to \$750 thousand per quarter per fiscal year. Additionally, fires tend to be concentrated during specific times and not spread out evenly among different quarters. Depending on timing, the estimated additional operating budget impact on this agency would be \$6.5 million per year, on average.

Department of Homeland Security and Emergency Management. Generally, funds are allocated for specific disasters, but since FY17, 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. Allocating funds for hypothetical emergencies that may not occur on a recurring basis raises concerns over whether these funds are truly needed; the department has not fully expended any of these allocations and received an additional \$750 thousand for FY21 despite carrying balances on the previous four years' orders totaling almost \$1.2 million as of October 2020. LFC has recommended that efforts to reform the existing system of emergency funding more precisely define the conditions under which emergency funds can be allocated and not permit funds to be allocated for unrealized emergencies. If such reforms are enacted, however, LFC has also noted that additional appropriations should be made to ensure DHSEM is able to continue to carry out its mission without this executive order funding.

Depending on the timing of emergency funding needs, the estimated additional operating budget impact on this agency would be \$750 thousand per year, on average.

SIGNIFICANT ISSUES

History of Emergency Funding. In 1955, the Legislature established a mechanism for the executive to allocate funding in emergency situations when it is not practical to wait for legislative appropriations. The enacted law specified the purpose of this funding as ensuring 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 provide a mechanism for the governor to allocate emergency funding in increments of up to \$750 thousand (originally \$500 thousand) for each “eligible and qualified applicant” impacted by a declared emergency that the governor has deemed “beyond local control and requiring the resources of the state.” Additionally, although these sections cap emergency funding amounts at \$750 thousand for each “eligible and qualified applicant,” many executive orders allocate amounts greater than this cap. In some cases, these orders identify multiple entities that require assistance in light of emergency situations (such as counties, cities, and tribal entities), but do not specify how much they are to receive.

Historically, EMNRD, DHSEM, and DMA have been the primary recipients of executive order funding;² however, as a result of the Covid-19 public health emergency, several agencies that have not historically received executive order funding were allocated funds to aid in pandemic response in FY20. The primary recipient of this funding was DOH, which received \$30 million, but the Aging and Long-Term Services Department (ALTSD), the Public Education Department (PED), and the Children, Youth and Families Department (CYFD) received \$750 thousand each. Since these agencies do not have a history of receiving executive order funding, they do not have established practices for managing this money.

² The primary statute under which it receives funding is 20-1-6, which is not impacted by this bill.

ADMINISTRATIVE IMPLICATIONS

With emergency order funding under this bill capped at \$750 thousand per quarter, agencies that regularly receive such funding (e.g. EMNRD and DHSEM) would likely require increases to their operating budgets to address funding needs routinely addressed through emergency funding.

Under this bill, the Legislature could routinely be called into special session to address emergency funding for fire suppression and matching requirements for federal emergency funds, as well as other types of emergencies that would require funding in excess of \$750 thousand. Delays in the allocation of emergency funding due to this requirement could preclude the executive from effectively intervening in an emergent situation to mitigate damage.

CONFLICT, RELATIONSHIP

This bill conflicts with Senate Bill 295, which repeals Sections 12-11-23 through 12-11-25 NMSA 1978 and rewrites these provisions as new material in Chapter 6, Article 7 NMSA 1978 (the sections of statute that govern public finances). SB295 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. Notably, SB295 allows the governor to issue an executive order or orders allocating up to \$5 million each to address a disaster. SB295 also specifies the ACF as the primary source of funding for disasters, and if the balance of the ACF is insufficient, allows the governor to access up to a total of \$20 million from the general fund operating reserve with approval from the Board of Finance. SB295 and does not provide a cap on the overall amount of expenditures in a fiscal year beyond the amount of funding available in the ACF plus the up to \$20 million available from the operating reserve.

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.

OTHER SUBSTANTIVE ISSUES

Executive order funding does not revert at the end of the fiscal year, and funding may carry over for many years (EMNRD is currently carrying balances tied to executive orders issued over a decade ago, and DHSEM is carrying balances almost ten years old). After an agency determines an executive order is closed (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.

Form and Content of Executive Orders. A 2006 LFC evaluation on the Department of Public Safety's Office of Emergency Management (the functions of which have since moved to DHSEM) found "the law is silent about the actual form and content of executive orders. Executive orders reviewed varied in format and content and from one administration to another. Inclusion of a specific allocation is not statutorily required, nor does statute require that an executive order define the duration of the event for the purposes of providing public assistance." Particularly if the executive is interpreting statute to allow for orders to allocate more than \$750

thousand, failure to identify the amounts being allocated raises serious concerns regarding the transparency of this funding mechanism.

The evaluation recommended the Legislature amend statute to “prescribe the specific details required in executive orders, in order to provide public transparency for all stakeholders involved and to prevent funding circumstances that are not clearly disaster or emergency related.” No such change has been enacted, and in the set of executive orders LFC staff reviewed in the past several months (which includes orders from FY11 through FY21), the content of orders continues to vary significantly.

DI/ER/rl/sb

ATTACHMENT 1

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 est.	\$ 507.2	\$ 0.3		\$ 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