

Joint Legislative Commission on Governmental Operations

Transfer of Funds to the State's Disaster Relief Reserve

Background

The North Carolina Emergency Management Act, Chapter 166A of the general statutes, among other things, authorizes the Governor to access state funds to offset state and local costs in prevention of, preparation for, response to, and recovery from natural or man-made emergencies.

Sources from which funds that may be access include:

1. § 166A-19.40. Use of contingency and emergency funds.

(a) Use of Funds for Relief and Assistance. - The Governor may use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of an emergency and may reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of the emergency so requires and the contingency and emergency funds are insufficient or inappropriate.

2. § 166A-19.41. State emergency assistance funds.

(a) Governor May Make Funds Available for Emergency Assistance. - In the event of a gubernatorially or legislatively declared state of emergency, the Governor may make State funds available for emergency assistance as authorized by this section. Any State funds made available by the Governor for emergency assistance may be administered through State emergency assistance programs which may be established by the Governor upon the declaration of a state of emergency. It is the intent of the General Assembly in authorizing the Governor to make State funds available for emergency assistance and in authorizing the Governor to establish State emergency assistance programs to provide State assistance for recovery from those emergencies for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

3. § 166A-19.42. State Emergency Response Account.

(a) Account Established. - There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Use of Funds. - The Governor may spend funds from the Account for the following purposes:

(1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster.

(2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of emergency assistance authorized by this Part shall continue to be financed by the funds made available under G.S. 166A-19.41.

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(c) **Reporting Requirement.** - The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken.

Transfer of Funds July 29, 2013

On July 29, 2013 the Office of State Budget and Management (OSBM) directed the Office of State Controller to transfer \$10 million from the Department of Public Safety's unspent, unobligated funds to the Disaster Relief Reserve to provide funding for projected payments related to past disasters (Hurricane Irene, 2011 Tornadoes, Western Winter Storms and various 2004 storms (S.L. 2005-1, Senate Bill 7).

The current balance of the Disaster Relief Reserve is \$10.6 million.

Policy Considerations:

- 1. Use of Reversions.** G. S. 143C-1-2 mandates that unless otherwise provided by law, at the end of a fiscal year the unexpended, unencumbered balance of an appropriation reverts to the fund from which the appropriation was made.
 - The action taken to transfer unencumbered and unspent FY 2012-13 state funds that would have otherwise reverted to the General Fund effectively reduced the amount of funds available for future appropriation by the General Assembly.
 - The action taken to transfer funds that would have otherwise reverted is inconsistent with current state law and past practice. In other contexts when the General Assembly does not want funds to revert, it explicitly says so by enacting a provision to make that exception clear. By way of example, the State Budget Act expressly exempts appropriations for capital improvements and information technology from the reversion requirement and a total of 11 exemptions are provided in the 2013 Appropriations Act.
- 2. Use of state agency funds.** G.S. 166A-19.40 provides for the use of state agency funds for relief and assistance from the effects of an emergency through the process of reallocation of other funds as may reasonably be available within the appropriations of the various departments.
 - While G.S. 166A-19.40 authorizes the Governor to reallocate state agency appropriations to help mitigate the impact of certain state natural disasters and

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emergencies, current law does not address “carrying forward” unspent agency funds from one fiscal year into another to do so.

- The action to transfer or “carryforward” state funds is inconsistent with current law. That, in addition to the absence of a clear appropriation, calls into question the status of the \$10 million.