

NCDOT Transportation Emergency Reserve Report 2022

Purpose:

G.S. 136-44.2E directs the Department of Transportation, in coordination with the Office of State Budget and Management (OSBM), to report to the House Appropriations Committee on Transportation, the Senate Appropriations Committee on the Department of Transportation, and the Fiscal Research Division on its evaluation of the department's Emergency Reserve and determination of the minimum balance required for the reserve. This report fulfils the requirements of that law.

Background:

Hurricanes Florence and Michael made landfall in the state in fiscal year 2019 and caused massive devastation, including to transportation infrastructure. As a result of these storms, the General Assembly created the Transportation Emergency Reserve in Session Law 2019-251. The legislature established it as a special fund at DOT and funded it with a \$64 million transfer from the General Fund. The fund balance cannot exceed \$125 million. Session Law 2020-3 delayed the required transfer for FY 2021. In FY 2022, the department transferred \$61 million from the Highway Fund to the Emergency Reserve as appropriated in Session Law 2021-180 to meet the required \$125 million balance.

The department may only use the Emergency Reserve upon a Presidential declaration of disaster under the Stafford Act (42 U.S.C. 5121-5207). The Stafford Act applies to Federal Emergency Management Agency-related damages, so the reserve cannot be used to match Federal Highway Administration costs. More importantly, FEMA regulations also have requirements related to duplication of benefits. This information can be found in Chapter 6: Cost Eligibility, Section 18: Duplication of Benefits, Subsection B: Non-Federal Grants and Cash Donations, in FEMA's Public Assistance (PA) Program and Policy Guide Version 4, effective June 1, 2020 (included as an appendix).

Because of this policy, the department does not believe it can use the Emergency Reserve on FEMA disasters until the project is finalized. Finalization refers to the process where FEMA and the department review expenditures for allowable FEMA reimbursement. The department would only use the Emergency Reserve if General Maintenance dollars were insufficient to cover pre-finalization costs. The reason for this order of funds is that any withdrawal from the reserve is met with a subsequent requirement to replenish the reserve back to \$125 million.

A project may take up to five years to get the final reimbursement from FEMA. The current timeline is for the department to provide documentation to FEMA for eligible projects. FEMA reviews and approves this documentation and provides a cost share of 75%. The typical timeline for this process is up to 30 months post disaster. Upon completion, the department submits final documents to FEMA for final payment.

Methodology:

NCDOT and OSBM evaluated the reserve and developed a methodology to determine the minimum amount needed in the reserve to meet necessary FEMA cost share requirements. The agencies evaluated expenditure averages of 19, 10 and 5 years with all years included. Expenditure averages were also evaluated by removing FY 2019 as an anomaly due to the occurrence of the two named storms discussed above. The results of the analysis are presented in Figure 1 below.

The department decided to use the 10-year average to determine the state match and ineligible expenditures due to the robustness of the data. It did not use the 19-year average, as a 2019 McKinsey study found that the state should expect to experience increased storm activity. The department and OSBM determined that this time period was too long for consideration.

The department determined that a 40% state match would be required for federally declared disasters. This figure includes the 25% state match requirement and an additional assumption of 15% of expenditures declared as ineligible for reimbursement.

The report includes two different presentations of financial data. The department decided to analyze the data without FY 2019 expenditures due to the unusual presence of hurricanes Florence and Michael. In addition, the department presented the amount of funds required to make payment before project completion and finalization as well as the amount that includes the state match and ineligible costs.

Figure 1: Analysis of Disaster Expenditures

NCDOT FEMA Disaster Configuration Declared							
SFY	Declared Event Expenditures	Declared Event Reimbursement	Comparison of various year averages				
2004	\$ 34,831,647.27	\$ 6,604,158.00					Avg expenditures
2005	\$ 62,876,767.62	\$ 46,435,054.75			last 5 year avg expenditures		\$ 97,202,675.77
2006	\$ 21,143,898.59	\$ 25,805,948.25			5 year removing anomaly of 2019		\$ 70,810,280.35
2007	\$ 3,848,336.74	\$ 12,520,272.78					
2008	\$ 600,109.76	\$ 3,526,086.25			19 year avg		\$ 48,367,124.79
2009	\$ 1,341,093.33	\$ 1,198,715.67			19 year avg removing anomaly of 2019		\$ 39,789,061.87
2010	\$ 31,673,622.57	\$ 3,188,005.65					
2011	\$ 8,899,385.75	\$ 20,193,614.75					
2012	\$ 42,450,050.17	\$ 26,108,547.58			10 year avg		\$ 71,131,045.92
2013	\$ 16,068,912.73	\$ 22,004,295.24			avg removing anomaly of 2019		\$ 56,504,244.64
2014	\$ 70,333,495.10	\$ 2,431,593.42					
2015	\$ 3,716,577.27	\$ 42,966,652.91					
2016	\$ 3,225,528.50	\$ 8,574,225.40			10 year avg and anticipate 40% match (25% match plus ineligible costs)		
2017	\$ 131,952,566.81	\$ 10,566,793.08					\$ 28,452,418.37
2018	\$ 63,908,993.41	\$ 48,106,866.50			match avg removing anomaly of 2019		\$ 22,601,697.86
2019	\$ 202,772,257.45	\$ 68,532,910.97					
2020	\$ 99,425,186.20	\$ 42,282,863.29			Hold in Reserve cash for total avg expenditures		\$ 56.5M to \$71M
2021	\$ 76,927,375.42	\$ 77,968,931.32			Hold in Reserve cash for just match avg		\$22.6M to \$28.5M
2022	\$ 42,979,566.35	\$ 55,966,796.92					

Results and Recommendations:

The department determined that the minimum balance of funds required in the reserve is \$28,452,418. This amount would meet the average amount of state match and ineligible costs. The state could also consider a maximum amount of \$71,131,045 should cash flow need to be maintained while awaiting project finalization.

Appendix 1:

Chapter 6: Cost Eligibility, Section 18: Duplication of Benefits, Subsection B: Non-Federal Grants and Cash Donations, in FEMA's Public Assistance (PA) Program B. Non-Federal Grants and Cash

Donations

Grants and cash donations from non-Federal sources are subject to the following criteria based on whether the funds are provided toward a specific purpose and whether that specific purpose is otherwise eligible for PA funding.

- If the funds are designated for the same purpose as eligible work, the following apply:
 - The Applicant may use the funds toward its non-Federal cost share.
 - If the funds are not used toward the non-Federal cost share, FEMA considers the donation or non-Federal grant a duplication of benefits and reduces eligible costs by the duplicated amount.
 - If the funds exceed the amount of the non-Federal cost share, FEMA reduces eligible costs by the excess amount.
- If the funds are designated for non-specific purposes, FEMA does not consider the funds a duplication of benefits. The Applicant may use the funds toward its non-Federal cost share. If the funds exceed the amount of the non-Federal share, the Applicant can apply the excess amount toward ineligible work.
- If the funds are designated for a specific purpose that is ineligible, FEMA does not allow the Applicant to apply the funds toward its non-Federal cost share.