

STATE DISASTER RELIEF FUND EXPENDITURES - BUDGET SECTION APPROVAL

This memorandum was prepared in response to a request for information regarding whether the Budget Section has the authority to approve spending of certain funds from the state disaster relief fund.

STATE DISASTER RELIEF FUND CREATED

Section 4 of 2009 Senate Bill No. 2012, codified as North Dakota Century Code Section 37-17.1-27, provides for the creation of a state disaster relief fund. Under Section 37-17.1-27, the money in the state disaster relief fund is to be used, subject to legislative appropriations, for providing funding for defraying the expenses of state disasters, including providing funds required to match federal funds for expenses associated with presidential-declared disasters in the state. Under Section 37-17.1-04, a "disaster" is broadly defined for the purposes of Chapter 37-17.1 as "the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby."

Section 5 of Senate Bill No. 2012 appropriated from the general fund \$43 million for transfer to the state disaster relief fund. Section 6 of Senate Bill No. 2012 appropriated to the Adjutant General the \$43 million from the state disaster relief fund to be used for the purpose of providing emergency relief funding. Section 6 further stated that up to \$20 million of the funds may be used for the purpose of providing emergency snow removal grants to counties, cities, and townships, and up to \$23 million of the funds may be used for paying costs related to the 2009 flood disaster, snow removal damage to roads, and other disasters in accordance with Section 8 of the bill.

Section 7 of Senate Bill No. 2012 established the conditions for the emergency snow removal grants. That section authorized a county, township, or city to apply to the Department of Emergency Services for an emergency snow removal grant for reimbursement of up to 50 percent of the costs incurred by the county, township, or city for the period January 2009 through March 2009, which exceeds 200 percent of the average costs incurred for those months in 2004 through 2008. Section 7 required each county, township, or city requesting reimbursement for the emergency snow removal grants to submit the request

in accordance with rules developed by the Department of Emergency Services and required the Department of Emergency Services to distribute the grants before June 30, 2009, and report to the Budget Section regarding the grants awarded.

Section 8 of Senate Bill No. 2012 authorized a political subdivision that received federal emergency relief funding relating to disasters occurring from January 2009 through June 2009 to apply to the Department of Emergency Services for an emergency relief grant of up to 50 percent of the local match required to receive this federal emergency relief funding. That section required each political subdivision that requested reimbursement to submit the request in accordance with rules developed by the Department of Emergency Services. Under Section 8, the Department of Emergency Services was authorized to distribute up to \$13 million in grants. That section further required Budget Section approval for any grant expenditures beyond \$13 million. In addition, the Department of Emergency Services was required to report to the Budget Section on grants awarded in the fourth quarter of calendar year 2009 and in the third quarter of calendar year 2010. Section 8 also provided that funds not distributed to political subdivisions may be used to match federal disaster relief funds received for state purposes, subject to Budget Section approval.

Although there appear to be some inconsistencies in the language of the relevant sections of Senate Bill No. 2012, the following breakdown of the provisions of each section separately can aid in interpreting the sections to reconcile perceived inconsistencies:

- Under Section 4, a state disaster relief fund is established with the broad purpose of providing funding for defraying the expenses of state disasters, including providing funds required to match federal funds for expenses associated with presidential-declared disasters in the state.
- Under Section 5, \$43 million is appropriated from the general fund for transfer to the state disaster relief fund.
- Under Section 6, the \$43 million in the state disaster relief fund is appropriated to the Adjutant General for the general purpose of providing disaster relief funding.

The Adjutant General is authorized to spend up to \$20 million for the specific purpose of providing emergency snow removal grants.

The Adjutant General is authorized to spend up to \$23 million for paying costs related to the 2009 flood disaster, snow removal damage to roads, and other disasters in accordance with Section 8 of the bill.

- Under Section 7, certain conditions are set for the distribution of emergency snow removal grants in a total amount of up to \$20 million, including a requirement of a report to the Budget Section.
- Under Section 8, certain conditions are set for emergency disaster relief grants to political subdivisions for up to 50 percent of the local match required to receive federal emergency relief funding for disasters that occurred between January 2009 and June 2009.

The Department of Emergency Services is authorized to distribute up to \$13 million in grants.

Grants distributed in excess of the total amount of \$13 million require Budget Section approval.

Any of the \$23 million provided to the Department of Emergency Services which is not distributed to political subdivisions may be used to match federal disaster relief funds received for state purposes, subject to Budget Section approval.

Section 6 of Senate Bill No. 2012 appropriates a total of \$43 million from the state disaster relief fund. That section also states the Adjutant General and the Department of Emergency Services may use up to \$20 million and up to \$23 million for specific purposes. It is important to note that Section 6 states that the Adjutant General "may" use the funds for those specific purposes. Under the drafting guidelines used by the Legislative Council, the term "may" is used as a discretionary term. The term "shall" is used to impose a duty or requirement. Thus, the use of the term "may" suggests that of the funds appropriated, the Adjutant General has the discretion to use the funds for those specific purposes under the conditions set forth in Sections 7 and 8. However, it is important to note that the language of Section 4 can be interpreted to allow a broader range of uses for the funds in the state disaster relief fund. A statutory fund has been created, funds have been appropriated, and there is general authority to use the funds for defraying the expenses of state disasters.

BUDGET SECTION APPROVAL

At the March 11, 2010, meeting of the Budget Section, the Adjutant General requested Budget Section approval for two requests for state matching funding for federally declared disaster reimbursement for disasters that did not occur between January 2009

and June 2009. The Budget Section passed a motion to approve those requests. The approval appeared to be based upon the portion of Section 8 of Senate Bill No. 2012 that authorized the use of funds not distributed to political subdivisions to match federal disaster relief funds received for state purposes, subject to Budget Section approval.

At the March 11, 2010, meeting of the Budget Section, the Adjutant General requested Budget Section approval for payment of four additional requests. Two of the additional requests were for reimbursement to pay 97 percent of the cost for the Federal Emergency Management Agency ineligible damages related to the 2009 flood, one request was to pay the federal share of an ineligible home buyout from the 1998 spring flood in Barnes County, and the final request was for reimbursement for the purchase of materials in preparation for the 2010 flood purchased before the presidential disaster declaration. Because the request of the Adjutant General for Budget Section approval mentions Section 4 of Senate Bill No. 2012 and because none of the requests would fall within the specific grant programs for which the Department of Emergency Services was required to adopt guidelines under Sections 7 and 8, it appears that the Adjutant General was relying on the general authority for the use of the state disaster relief funds under Section 37-17.1-27 (Section 4), and that the money in the fund may be used for providing funding for defraying the expenses of state disasters. A general rule of statutory interpretation is that courts will give great deference to the interpretation of a statute by the agency responsible for implementing or enforcing the statute.

Although Section 8 of Senate Bill No. 2012 includes a statement that "[a]ny additional grant expenditures require Budget Section approval" and further provides that funds not distributed to political subdivisions may be used to match federal disaster relief funds received for state purposes, subject to Budget Section approval, none of the four requests would appear to fall within the Budget Section approval requirements. In addition, Section 37-17.1-27 does not include any provision regarding a requirement for Budget Section approval of funds used under that section. Therefore, it appears that the Budget Section would have no authority to approve or disapprove of those four requests and that the Adjutant General and Department of Emergency Services may distribute the funds if the Adjutant General concludes that the grants are eligible for reimbursement under Section 37-17.1-27.