

# USE OF EMERGENCY FUND RELATIVE TO DECLARED EMERGENCIES

A Report Prepared for the

**Legislative Finance Committee**

by

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February 28, 2002

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## **THE ISSUE**

Following the September 11<sup>th</sup> terrorist attacks in New York City and Washington D.C., the Governor's emergency fund was used to pay for expenditures related to reactive and proactive measures taken in response to the attacks. Subsequently, the lack of a clearly definable threat requiring follow-on action led to questions about whether this use was what the legislature intended when developing the emergency fund statutes. This report will attempt to clarify some of the issues surrounding the use of the emergency fund in this situation, and provide options for legislative discussion and action.

## **BACKGROUND**

The Governor's emergency fund is established in Title 10, chapter 3 MCA, which provides for the statutory appropriation of up to \$12 million in any biennium whenever an emergency or disaster is declared by the governor. Statute allows the Governor to declare a state of emergency, and defines an emergency as "*the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.*" Subsequently, 10-3-303 (4) MCA allows for continued expenditure of the emergency fund as follows: "*after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.*"

Since 1971, the fund has been used to allow the State of Montana to react to and recover from emergencies and disasters including explosions, fires, floods, and blizzards. Previously, Presidential- or Governor-declared disasters and emergencies have almost always required some type of mitigation response and subsequent aftermath cleanup. The emergency declared after the September 11<sup>th</sup> attacks created a new scenario in which there was no tangible damage to property or citizens, and after initial response actions, follow-on activities were limited to preparation against a threat not readily identifiable by location, timing, duration, or method of destruction.

Consequently, this led to a situation where expenditures were made for security, planning, and coordination efforts beyond the duration of the Governor's declared state of emergency, along with recurring activities that were eventually continued with a source of funding other than the Governor's Emergency Fund. For these activities, it may be difficult to clarify the extent of their relativity to the immediate threat, and the timelines along which they may have been necessary to prepare for the threat.

As part of the research for this report, a legal opinion was requested from the legal staff within the Legislative Services Division, asking specifically about the expenditures from the emergency fund for activities related to the September 11<sup>th</sup> attacks. That opinion is attached. The legal opinion concludes that expenditures from the Governor's emergency fund are not in conflict with statute as currently written, provided activities which become recurring are eventually funded from other sources, or terminated. The legal

opinion does note that statute does not clearly define the criteria by which activities may qualify as “services required as a result of the emergency or disaster.”

## **TIMELINES, APPROPRIATIONS, AND EXPENDITURES RELATED TO THE SEPTEMBER 11<sup>TH</sup> ATTACKS**

A complete listing of the events and timelines related to the expenditure of emergency fund associated with the September 11<sup>th</sup> attacks is attached as Appendix A. A table comparing appropriations, expenditures and expected reimbursement is attached as Appendix B.

### **ISSUES**

The following issues and questions for the legislature are relative to the discussion on intended use of the Governor’s emergency fund.

#### *Issue:*

Effective September 11<sup>th</sup>, Governor Martz declared a state of emergency related to the threat of terrorism in Montana, which subsequently allowed for emergency fund expenditures for the following response actions:

- 1) Security and support for the National Federal Emergency Management Agency Conference attendees at Big Sky, Montana;
- 2) Operation of the State Emergency Coordination Center on a 24-hour basis;
- 3) Additional contracted security at the State Capitol; and
- 4) Contracted security through the Montana Highway Patrol for officers assigned to guard Governor Martz.

#### *Questions:*

- 1) *Should the emergency fund be used for this and similar types of emergencies? If not, what funding mechanism should be available to the Governor in similar situations?*
- 2) *Does this use conform to the legislature’s intended use of the emergency fund for initial response to a declared emergency? If not, what expenditures should qualify for use of the emergency fund in a similar situation?*

#### *Issue:*

Effective September 30<sup>th</sup>, 2001, Governor Martz terminated the declared state of emergency, and allowed the continuation of several functions, which included:

- 1) Continued security provided for the Governor by the Montana Highway Patrol through October 10<sup>th</sup>, 2001;
- 2) Compressed completion of several state disaster preparedness plans through January 1<sup>st</sup>, 2002; and
- 3) Extended operation of the State Emergency Coordination Center through January 1<sup>st</sup>, 2002.

*Questions:*

- 1) Do these expenditures conform with the legislature's intended use of the emergency fund for follow-on actions related to a declared emergency?*
- 2) If not, what expenditures should qualify for use of the emergency fund in a similar situation?*
- 3) What oversight, if any, should the legislature have over expenditures for follow-on actions, including potential limits on funding and the length of time during which expenditures related to the emergency or disaster may be made?*

## **RELEVANCE TO OTHER SITUATIONS**

This situation is not limited to a response to the threat of terrorism. A similar situation could present itself in the form of an outbreak of an infectious livestock disease (Foot and Mouth Disease is an example) in North America. If an outbreak of Foot and Mouth Disease occurred in North Dakota cattle, it is conceivable that Montana would react swiftly to monitor and take action to prevent transmission of the disease into our state. This would involve actions and expenditures related to a threat, with no tangible damage to Montana citizens or property, on a conceivably long timeline. This situation could again highlight the disconnect between the declaration of a state emergency and the occurrence of expenditures for actions that may arguably be included under "services required as a result of the emergency or disaster."

## **OPTIONS**

Based on the above discussion, the legislature may wish to address statutory changes to prevent reoccurrence of similar situations. Options available to the committee include:

- 1) Take no action; or
- 2) Request a legislative solution. The legislature could request staff to prepare draft legislation to clarify or change statute relating to the emergency fund, which addresses the questions posed above, or other concerns as necessary.

## APPENDIX A

### EVENTS AND TIMELINES

Issues in this report are addressed in the context of the following events and timelines:

- September 11<sup>th</sup>, terrorist attacks take place in New York City and Washington, D.C.
- Effective September 11<sup>th</sup>, President Bush Declares a national emergency. This declaration is still in effect.
- Effective September 11<sup>th</sup>, Governor Martz declares a state emergency. Per 10-3-302 MCA, this declaration will only last 20 days.
- September 14<sup>th</sup>, the Department of Military Affairs, through the Disaster and Emergency Services Division (DES), requests \$50,000 general fund authority from the Governor's emergency fund for "the costs to activate, on a 24-hour basis, the State Emergency Coordination Center (SECC), National Guard activation costs to provide security, and costs associated with operating a satellite ECC at Big Sky for State and National emergency management leaders." OBPP approves on September 18<sup>th</sup>.
- October 2<sup>nd</sup>, Governor Martz provides a memo to Department of Military Affairs, which:
  - 1) Confirms her formal termination of the state of emergency declared in Executive Order 23-01; and
  - 2) References 10-3-303(4)(c) MCA, in authorizing DES to "continue those specific services and tasks that were discussed with the Director/OBPP yesterday, subject to the fiscal limits and timeline limits (i.e., 30 days) that were agreed to by Director Swysgood in that discussion."
- October 5<sup>th</sup>, the Department of Military Affairs, through DES, requests \$29,200 general fund authority from the Governor's emergency fund for "costs to complete the preventative tasks initiated by the State Emergency Coordination Center (SECC) in response to the continued threat of terrorist attacks on the United States per Governor Martz' Oct 2, 2001 letter to General Prendergast and Executive Order 23-01. This authority will be used to pay overtime, travel, and operating expenses for State DES and to hire short term workers to help complete the State emergency Coordination Plan, Weapons of Mass Destruction Plan, Pharmaceutical Stockpile Plan and other contingency plans that continue to arise due to the threat." The department references 10-3-303 MCA as the authority for the request. OBPP approves on October 12<sup>th</sup>.
- October 29<sup>th</sup>, the Department of Administration, through the General Services Division, requests \$6,990 general fund authority from the Governor's emergency fund to "help pay for the additional security the governor has required since September 11, 2001." This

authority pays for additional contracted capitol security from September 11<sup>th</sup> to September 30<sup>th</sup>. OBPP approves on November 2<sup>nd</sup>.

- November 15<sup>th</sup>, the Department of Military Affairs, through DES, requests \$39,811 in general fund authority from the Governor's emergency fund for "overtime, travel, and operating expenses of State DES staff and/or temporary hires to continue State ECC planning and response operations through the holiday seasons, including Ramadan." OBPP approves on November 19<sup>th</sup>.

- November 20<sup>th</sup>, the Department of Justice, through the MT Highway Patrol, requests \$6,291 general fund authority from the Governor's emergency fund for additional security provided to FEMA representatives at a conference in Big Sky and to the Capitol Building. This authority pays for Highway Patrol Officers assigned to guard Governor Martz through October 10<sup>th</sup>. OBPP approves on November 26<sup>th</sup>.

**Appendix B**

<b>Governor's Emergency Fund</b>				
<b>Appropriations and Expenditures Related to September 11th Attacks</b>				
<i>As of 31 Jan 2002</i>				
<b>Department</b>	<b>Appropriation</b>	<b>Total Expenditures</b>	<b>Expected Reimbursement</b>	<b>Expected Net Expenditures</b>
Military Affairs	\$119,011.00	\$103,472.96	(\$19,000.00)	\$82,726.10
Justice	6,921.00	6,921.00		6,921.00
Administration	6,990.00	6,989.33		6,989.33
<b>Total</b>	<b>\$132,922.00</b>	<b>\$117,383.29</b>	<b>(\$19,000.00)</b>	<b>\$96,636.43</b>
<i>Military Affairs - expected reimbursement is for support provided to New York per State Mutual Aid Agreement. Montana sent 2 individuals to New York immediately following the September 11th Attacks.</i>				