

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1521 Disaster Public Assistance

SPONSOR(S): Overdorf

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee	16 Y, 0 N	Landry	Dearden
2) State Affairs Committee	22 Y, 0 N	Toliver	Williamson

SUMMARY ANALYSIS

The Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program provides federal assistance to state, local, territorial, and tribal governments as well as certain private nonprofit organizations for the recovery from presidentially declared disasters or emergencies. In order to access assistance under the PA program, the Governor must request the President of the United States issue a presidential disaster declaration. A Joint Preliminary Damage Assessment (JPDA) must accompany the Governor's declaration request. JPDAAs document the impact and magnitude of an event. FEMA uses JPDA information to determine the estimated cost of assistance under the PA program. FEMA compares the estimated cost of assistance against the population to give some measure of the per capita impact. FEMA then determines whether the per capita impact meets a specified threshold, which is known as the per capita impact indicator. FEMA uses the per capita impact indicator when determining whether to recommend that the President declare a major disaster. Once the President signs a disaster declaration, FEMA may begin allocating disaster assistance funds to the state.

Beginning in 1986, the per capita impact indicator was set at \$1, but has been adjusted for inflation since 1999. The state per capita impact indicator for fiscal year 2020 was \$1.53. FEMA is proposing a new rule that would increase the state per capita impact indicator to \$1.98. The new threshold is an increase of 49.5 percent from the current baseline. Because of the substantial increase in the threshold, the proposed rule may result in fewer disaster declarations, resulting in a decrease in federal disaster assistance.

The memorial urges FEMA to amend the proposed rule to provide for a gradual increase in the per capita impact indicator.

Legislative memorials are not subject to the Governor's veto powers and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

This memorial does not have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

FEMA's Public Assistance Program

The Robert T. Stafford Disaster Relief Act and Emergency Assistance Act (Stafford Act) authorizes the President of the United States to provide federal assistance when the magnitude of an incident or threatened incident exceeds the affected state, local, territorial, and tribal government capabilities to respond and recover.¹ The Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program provides federal assistance to state, local, territorial, and tribal governments as well as certain private nonprofit organizations for the recovery from presidentially declared disasters or emergencies.² Through the PA Program, FEMA provides assistance for debris removal, emergency protective measures, and the restoration of disaster-damaged facilities.³ The PA Program also encourages the protection of damaged facilities from future incidents through mitigation measures.⁴

In Florida, FEMA funds are distributed and managed by the Florida Division of Emergency Management (the division) as the pass-through entity. Since January 2019, the division has distributed more than \$846 million in PA funds to recipients affected by Hurricane Michael and more than \$1.6 billion in PA funds for Hurricane Irma.⁵

To receive funding under the PA Program, the Governor must request that the President of the United States issue a presidential disaster declaration.⁶ There are two types of presidential disaster declarations, depending on the event's severity: emergency⁷ declarations and major disaster⁸ declarations.⁹

If a catastrophe occurs in a state and the Governor believes a presidential major disaster declaration is necessary, the Governor must begin the process by requesting his or her FEMA Regional Administrator perform a Joint Preliminary Damage Assessment (JPDA).¹⁰ A JPDA must accompany a request for a presidential major disaster declaration.¹¹ During a JPDA, local, state, and FEMA officials work together to estimate and document the impact and magnitude of an event.¹² FEMA then evaluates the gubernatorial request to determine whether the agency should recommend to the President that

¹ 42 U.S.C. § 5121(b).

² Federal Emergency Management Agency, *Public Assistance Program and Policy Guide*, version 4, available at https://www.fema.gov/sites/default/files/2020-06/fema_public-assistance-program-and-policy-guide_v4_6-1-2020.pdf (last visited March 20, 2021).

³ *Id.*

⁴ *Id.*

⁵ Email from Jason Mahon, Communications Director, Florida Division of Emergency Management, (Mar. 14, 2021)

⁶ Federal Emergency Management Agency, *How a Disaster Gets Declared*, <https://www.fema.gov/disasters/how-declared> (last visited March 17, 2021).

⁷ The term "emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. 42 U.S.C. § 5122(1).

⁸ The term "major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. § 5122(2).

⁹ *Supra* note 6.

¹⁰ 44 C.F.R. §206.33(a).

¹¹ 44 C.F.R. § 206.36(c)(4).

¹² *Supra* note 5.

assistance is warranted and a major disaster should be declared.¹³ FEMA considers several factors when evaluating a Governor's request: estimated cost of the assistance, localized impacts, insurance coverage in force, hazard mitigation, recent multiple disasters, or programs of other federal assistance.¹⁴ To determine the "estimated cost of the assistance" factor, FEMA, using the JPDA information, compares the estimated cost of federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact. FEMA then determines whether the per capita impact meets a specified threshold, this is known as the per capita impact indicator.¹⁵ Once the President signs a disaster declaration, FEMA may begin allocating disaster assistance funds to the state.

Per Capita Impact Indicator

Beginning in 1986, the per capita impact indicator was set in rule at \$1.¹⁶ The per capita indicator remained at \$1 until 1999, when FEMA began adjusting the indicator for inflation.¹⁷ The state per capita impact indicator for fiscal year 2020 was \$1.53.¹⁸ As such, in order for Florida to be eligible for a presidential major disaster declaration to make the state eligible for FEMA assistance, the estimated cost of assistance must exceed \$28,766,004.30 per disaster.

In December 2020, FEMA issued a notice of proposed rulemaking to amend the rule establishing the per capita indicator, entitled "Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program," to increase the state per capita impact indicator to \$1.98.¹⁹ Per the proposed rule, Florida's estimated cost of assistance must exceed the new threshold of \$42,172,664. The new threshold is an increase of 49.5 percent from the state's current baseline.

	Per Capita Indicator	State Threshold
Fiscal Year 2020	\$1.53	\$28,766,004.30
Proposed Change	\$1.98	\$42,172,664.00

FEMA's stated purpose for implementing the changes is to provide for a better distribution of responsibilities between states and the federal government and to incentivize states to invest more in response, recovery, and mitigation activities.²⁰ Because of the substantial increase in the per capita impact indicator, the proposed rule may result in fewer major disaster declarations, resulting in a decrease in federal disaster assistance.

Effect of the Memorial

The memorial urges FEMA to amend the proposed rule to provide for a gradual increase in the per capita impact indicator.

Copies of the memorial will be sent to the President of the United States, to the Administrator of FEMA, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

¹³ 44 C.F.R. § 206.48.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program, 85 Fed. Reg., 80719 (Dec. 14, 2020).

¹⁷ *Id.*

¹⁸ FEMA, Per Capita Impact Indicator and Project Thresholds, available at

<https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator> (last visited March 20, 2021).

¹⁹ *Id.*

²⁰ *Id.*

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The memorial neither authorizes nor requires executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.